EXHIBIT A

EXHIBIT A-1

Court of Common Pleas of Philadelphia County			For Prothonotary Use Only (Docket Number)	
Trial Division Civil Cover Sheet		MAY 2024	02672	
		E-Filing Number: 240504930		
PLAINTIFF'S NAME MERLE CARTER		L'ORÉAL USA, INC.	DEFENDANTS NAME L'ORÉAL USA, INC.	
PLAINTIFF'S ADDRESS 6608 LINCOLN DRIVE		DEFENDANT'S ADDRESS 575 FIFTH AVENUE		
PHILADELPHIA PA 19199		NEW YORK NY 10017		
PLAINTIFF'S NAME		DEFENDANT'S NAME L'ORÉAL USA PRODUC'	DEFENDANTS NAME L'ORÉAL USA PRODUCTS, INC.	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 10 HUDSON YARDS NEW YORK NY 10001		
PLAINTIFF'S NAME		DEFENDANT'S NAME SOFT SHEEN-CARSON,	DEFENDANT'S NAME SOFT SHEEN-CARSON, LLC	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 10 HUDSON YARDS NEW YORK NY 10001	10 HUDSON YARDS	
1	TAL NUMBER OF DEFENDANTS	COMMENCEMENT OF ACTION To Complaint Petition A Writ of Summons Transfer	Action	
-		Ass Tort Commer avings Action Minor Co		
More than \$50,000.00 Non-Jury Petition Other:			Statutory Appeals W/D/Survival	
CASE TYPE AND CODE	IIICI.			
2P - PRODUCT LIABILI	TY	WD		
STATUTORY BASIS FOR CAUSE OF ACTION	THE C	THE COUNTY		
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		FILED PRO PROTHY	IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
MAY 22 2024				
		C. SMITH		
TO THE PROTHONOTARY:				
Kindly enter my appearance on	behalf of Plaintiff/Petition	er/Appellant: MERLE CARTER		
Papers may be served at the add	ress set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY SHERRELL L. DANDY			ADDRESS KLINE & SPECTER, P.C. 1525 LOCUST STREET 19TH FLOOR PHILADELPHIA PA 19102	
PHONE NUMBER (215)772-1000 FAX NUMBER none entered		19TH FLOOR		
SUPREME COURT IDENTIFICATION NO. 309348		E-MAIL ADDRESS sherrell.dandy@kl	E-MAIL ADDRESS sherrell.dandy@klinespecter.com	
SIGNATURE OF FILING ATTORNEY OR PARTY SHERRELL DANDY		DATE SUBMITTED Wednesday, May 22	DATE SUBMITTED Wednesday, May 22, 2024, 09:54 am	

COMPLETE LIST OF DEFENDANTS:

- 1. L'ORÉAL USA, INC. 575 FIFTH AVENUE NEW YORK NY 10017
- 2. L'ORÉAL USA PRODUCTS, INC. 10 HUDSON YARDS NEW YORK NY 10001
- 3. SOFT SHEEN-CARSON, LLC 10 HUDSON YARDS NEW YORK NY 10001
- 4. STRENGTH OF NATURE, LLC 64 ROSS ROAD SAVANNAH GA 31405
- 5. GODREJ SON HOLDINGS, INC. 64 ROSS ROAD SAVANNAH GA 31405
- 6. AVLON INDUSTRIES, INC. 1999 NORTH 15TH STREET MELROSE PARK IL 60160
- 7. ACME MARKETS, INC.
 75 VALLEY STREAM PARKWAY
 MALVERN PA 19355
- 8. ACME MARKETS
 7010 GERMANTOWN AVENUE
 PHILADELPHIA PA 19119
- 9. ACME MARKETS 7700 CRITTENDEN STREET PHILADELPHIA PA 19118
- 10. CVS PHARMACY, INC. 1 CVS DRIVE WOONSOCKET RI 02895
- 11. CVS PHARMACY
 6701 RIDGE AVENUE
 PHILADELPHIA PA 19128
- 12. CVS PHARMACY
 7065 LINCOLN DRIVE
 PHILADELPHIA PA 19119

EXHIBIT A-2

KLINE & SPECTER, P.C.

By: SHANIN SPECTER, ESQUIRE (Attorney I.D. No.: 40928) ffice TOBI L. MILLROOD, ESQUIRE (Attorney I.D. No.: 77764) BRADEN R. LEPISTO, ESQUIRE (Attorney I.D. No.: 313586) SHERRELL L. DANDY, ESQUIRE (Attorney I.D. No.: 309348)

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1525 Locust Street Philadelphia, Pennsylvania 19102 215-772-1000 215-772-1359 (fax)

ATTORNEYS FOR PLAINTIFF

MERLE CARTER, M.D. 6608 LINCOLN DRIVE PHILADELPHIA, PA 19199

PLAINTIFF

V.

DEFENDANTS

L'ORÉAL USA, INC. 575 FIFTH AVENUE NEW YORK, NY 10017

AND

L'ORÉAL USA PRODUCTS, INC. 10 HUDSON YARDS NEW YORK, NY 10001

AND

SOFT SHEEN-CARSON, LLC 10 HUDSON YARDS NEW YORK, NY 10001

AND

STRENGTH OF NATURE, LLC 64 ROSS ROAD SAVANNAH, GA 31405

AND

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY, **PENNSYLVANIA**

JURY TRIAL DEMANDED

GODREJ SON HOLDINGS, INC. 64 ROSS ROAD SAVANNAH, GA 31405

AND

AVLON INDUSTRIES, INC. 1999 NORTH 15TH STREET MELROSE PARK, IL 60160

AND

ACME MARKETS, INC. 75 VALLEY STREAM PARKWAY MALVERN, PA 19355

AND

ACME MARKETS 7010 GERMANTOWN AVENUE PHILADELPHIA, PA 19119

AND

ACME MARKETS 7700 CRITTENDEN STREET PHILADELPHIA, PA 19118

AND

CVS PHARMACY, INC. 1 CVS DRIVE WOONSOCKET, RI 02895

AND

CVS PHARMACY 6701 RIDGE AVENUE PHILADELPHIA, PA 19128

AND

CVS PHARMACY 7065 LINCOLN DRIVE PHILADELPHIA, PA 19119

NOTICE TO PLEAD

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service Philadelphia Bar Association 1101 Market Street, 11th Floor Philadelphia, PA 19107 (215) 238-6338

ADVISO

Le han demandado a used en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Referral Service Philadelphia Bar Association 1101 Market Street, 11th Floor Philadelphia, PA 19107 (215) 238-6338

CIVIL ACTION – COMPLAINT

Plaintiff, Merle Carter, M.D., through her undersigned counsel, Kline & Specter, P.C., hereby demands damages from the Defendants in a sum in excess of the local arbitration limits exclusive of interest, costs, and damages for prejudgment delay, upon the cause of action set forth below:

PARTIES

- 1. Plaintiff, Merle Carter, M.D., is an adult individual citizen and resident of the Commonwealth of Pennsylvania, residing therein at 6608 Lincoln Drive, Philadelphia, PA 19199.
- 2. Defendant, L'Oréal USA, Inc., is incorporated in Delaware with its principal place of business and headquarters located at 575 Fifth Avenue, New York, New York 10017.
- Defendant, L'Oréal USA Products, Inc., is incorporated in Delaware with its principal place of business and headquarters located at 10 Hudson Yards, 347 Tenth Avenue, New York, New York 10001.
- 4. Defendant, SoftSheen-Carson, LLC, is a limited liability company organized in the state of New York with its principal place of business and headquarters located at 90 State St., Albany, New York 12207. Upon information and belief, SoftSheen-Carson, LLC's members and sole interested parties are L'Oréal USA, Inc. and L'Oréal S.A., L'Oréal's French owned company, with its headquarters and principal place of business located in France.
- 5. Defendant, Carson, Inc., D/B/A SoftSheen, is a corporation with its principal place of business and headquarters located at 2870 Peachtree Rd., Suite, 464, Atlanta, Georgia 40405.
- 6. Defendant, Carson (W.I.) Inc., D/B/A SoftSheen, is a corporation, with its headquarters located in Delaware at 251 Little Falls Drive, Wilmington, Delaware 19808.

- 7. Defendants L'Oréal USA, Inc., Loreal USA Products, Inc., SoftSheen-Carson, LLC, Carson, Inc., and Carson (W.I.) Inc., will be collectively referred to as "L'Oréal Defendants."
- 8. Defendant Strength of Nature, LLC, is a corporation with its principal place of business and headquarters located at 64 Ross Road, Savannah, Georgia 31405.
- 9. Defendant Godrej Consumer Products Limited is, and at all times relevant to this action, a global corporation with its principal place of business located at Godrej One, Fourth Floor, Pirojshanagar, Eastern Express Highway, Fikhroli (East), Mumbai 400 079, India. The company's website references Strength of Nature as its base of operations in the U.S., which is located at 64 Ross Road, Savannah, Georgia, and process may be served upon its registered agent, Karen Sood, 6355 Peachtree Dunwood Road, Atlanta Georgia, 30328.
- 10. Defendants Strength of Nature, LLC and Godrej Consumer Products Limited, will be collectively referred to as "Strength of Nature Defendants."
- 11. Defendant Avlon Industries, Inc. ("Avlon") is, and at all times relevant to this action, a corporation with its principal place of business located at 1999 North 15th Street, Melrose Park, Illinois 60160.
- 12. ACME Markets, Inc. is a corporation with its principal place of business and headquarters located at 75 Valley Stream Parkway, #250, Malvern, PA 19355. At all times relevant hereto, ACME Markets, Inc., conducted business as ACME Markets at 7010 Germantown Avenue, Philadelphia, PA 19119 and 7700 Crittenden Street, Philadelphia PA, 19118.
- 13. Defendants ACME Markets, Inc., ACME Markets at 7010 Germantown Avenue, and ACME Markets at 7700 Crittenden Street will be collectively referred to as "ACME Defendants."

- 14. Defendant CVS Pharmacy, Inc. ("CVS") is a corporation with its principal place of business and headquarters located at 1 CVS Drive, Woonsocket, RI 02895. At all times relevant hereto, CVS conducted business as CVS Pharmacy located at 6701 Ridge Avenue, Philadelphia, PA 19128 and the CVS Pharmacy located at 7605 Lincoln Drive, Philadelphia, PA 19119.
- 15. Defendants CVS Pharmacy, Inc., CVS Pharmacy at 6701 Ridge Avenue and CVS Pharmacy at 7605 Lincoln Drive will be collectively referred to as "CVS Defendants."

JURISDICTION

- 16. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
 - 17. This Court has original jurisdiction over this civil action.
 - 18. This Court has personal jurisdiction over the Defendants.
- 19. At all times relevant hereto, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon (Manufacturer Defendants) contracted with, entered agreements with, sold, shipped, and distributed hair relaxer products, including those products Plaintiff purchased and applied to her hair, to various companies and stores within the Commonwealth of Pennsylvania, including but not limited to Defendants, ACME Markets and CVS Pharmacy.
- 20. At all times relevant hereto, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon engaged in the business of manufacturing, making, distributing, creating, dispensing, selling, shipping, advertising, transporting, and marketing hair relaxer products which contained dangerous and harmful amounts of endocrine disrupting chemicals and other harmful substances to sell at ACME Markets and CVS Pharmacy.
- 21. At all times relevant hereto, ACME Markets and CVS Pharmacy conducted business in the Commonwealth of Pennsylvania by: (1) selling and distributing products and

merchandise, including Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen (Hair Relaxer Brands), in the Commonwealth of Pennsylvania for the purpose of realizing pecuniary benefit from those sales and distributions; (2) shipping products and merchandise, including Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen, directly into and through the Commonwealth of Pennsylvania; (3) engaging in business in the Commonwealth of Pennsylvania; and/or, (4) owning, using, and/or possessing real property situated in the Commonwealth of Pennsylvania.

- 22. At all times relevant hereto, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon had, and continues to have, regular and systematic contact with and conducts business in and from the Commonwealth of Pennsylvania, such that it has purposefully availed itself of the laws of the Commonwealth of Pennsylvania and can reasonably expect to both sue and be sued in Pennsylvania.
- Avlon's presence in the Commonwealth of Pennsylvania satisfies the due process requirements for Pennsylvania courts to exercise jurisdiction over it. Additionally, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon consented to the exercise of jurisdiction over it by Pennsylvania courts by registering to and conducting business from the Commonwealth of Pennsylvania.
- 24. A federal court would not have jurisdiction over this case, as there is no federal question under 28 U.S.C. § 1331 or complete diversity between the parties under 28 U.S.C. § 1332. Therefore, this case is not removable to federal court under 28 U.S.C. § 1441 and 28 U.S.C. § 1446.

25. Venue is proper in Philadelphia County for each of the following reasons: (1) each Defendant regularly conducts business in Philadelphia County; (2) ACME Markets and CVS Pharmacy, as alleged *supra*, has a registered office and/or retail stores in Philadelphia County; (3) the cause of action arose in Philadelphia County; and/or, (4) Philadelphia County is a county where a transaction or occurrence took place out of which the cause of action arose.

26. The damages Plaintiff seeks, exclusive of interests and costs, exceed the jurisdictional amount requiring arbitration referral. Plaintiff seeks more than \$50,000 in damages.

FACTUAL BACKGROUND

- 27. At all times material hereto, L'Oréal Defendants developed, tested, assembled, marketed, manufactured, and sold various brands of chemical hair relaxer products that were specifically marketed to black women, including but not limited to the following brands that Plaintiff used to chemically straighten her hair:
 - a. Dark & Lovely;
 - b. Precise;
 - c. Bantu; and,
 - d. Optimum Care.
- 28. At all times material hereto, Strength of Nature Defendants developed, tested, assembled, marketed, manufactured, and sold various brands of chemical hair relaxer products that were specifically marketed to black women, including but not limited to the following brands that Plaintiff used to chemically straighten her hair:
 - a. Motions;
 - b. Dr. Miracle; and,
 - c. Ultra Sheen.

29. At all times material hereto, Defendant Avlon Industries, Inc. developed, tested, assembled, marketed, manufactured, and sold various brands of chemical hair relaxer products that were specifically marketed to black women, including but not limited to the Affirm brand that Plaintiff used to chemically straighten her hair.

30. Plaintiff developed endometrial cancer as a result of frequent use of chemical hair relaxers manufactured by the Defendants.

CHEMICAL HAIR RELAXERS

- 31. Black and brown girls are taught at a young age that to be accepted in society, they must tame and control their natural hair.
- 32. This has led black and brown women and girls to temporarily or permanently alter their curly hair strands to make them straight to adhere to western beauty standards.
- 33. Traditionally, black women straightened their hair using a heated comb, commonly referred to as the "hot comb" invented by Francois Marcel Gateau. The hot comb, combined with temporary hair straightening and growth products created by Madame C.J. Walker, became popular in the early 1900s. Madame C.J. Walker became the country's first black female millionaire. This financial success showed the world that black haircare, particularly hair straightening products, is a very lucrative business.
- 34. In 1909, Garrett A. Morgan invented a hair straightening cream after mixing chemicals to correct friction in the sewing machine when sewing wool. The G.A. Morgan Refining Cream, which straightened wool, was later used to straighten hair.
- 35. In the 1960s, the first-generation hair relaxer was created to chemically straighten curly hair permanently by breaking and restructuring the disulfide bonds. The active ingredient, sodium hydroxide, a lye, irritated the scalp, diminished hair strength, and was difficult to rinse.

Additionally, the lye caused the relaxer to have a short shelf life because of the separation of the oil and water in the relaxer cream.

36. In the 1970s, to remedy the disadvantages of the lye relaxer, hair relaxer manufacturers began marketing no-lye relaxers using calcium hydroxide or guanidine hydroxide as the active ingredients instead of sodium hydroxide.

- 37. Home hair relaxer kits were marketed and sold to women who wanted to apply the chemical hair relaxer at home instead of having it professionally applied at a hair salon.
- 38. The home hair relaxer kits were a cheaper alternative to professional application at a hair salon.
- 39. The home hair relaxer kit typically contains plastic gloves and a wooden spatula for application because the chemicals are too harmful to touch with bare hands. The home hair relaxer kits also include the relaxer cream, a liquid activator mixed with the relaxer cream before application, neutralizing shampoo, and a restorative moisturizing balm.
- 40. For first-time application, the relaxer cream is placed on the hair from the root to the end. After letting it sit on the hair for ten to twenty minutes, the relaxer is rinsed out with warm water and then shampooed with a neutralizing shampoo to deactivate the alkalizing chemical process, followed by applying conditioner to raise the pH level and soften the hair. Lastly, a moisturizing treatment is used to restore hydration.
- 41. Defendants began marketing the new and improved no-lye-based relaxers using two main marketing strategies: 1) marketing directly to black women and 2) portraying the no-lye relaxer as safe.



- 42. In the 1970s and 1980s, hair relaxer manufacturers used black celebrities such as Debbie Allen and Natalie Cole in their commercial ads to market the no-lye relaxer as a safe way to make curly and coarse hair more manageable.
- 43. In Dark & Lovely's 1980 hair relaxer commercial, while applying a hair relaxer, dancer and actress Debbie Allen stated, "For me, there is more to Dark & Lovely than just that it doesn't contain lye. Dark & Lovely is such a pleasure. It makes me feel like dancing." While dancing, she further stated, "It relaxes my hair just as well as those lye-based relaxers with a lot less burning and irritation, and there is no offensive odor...and it leaves it so soft that I can do anything with it."

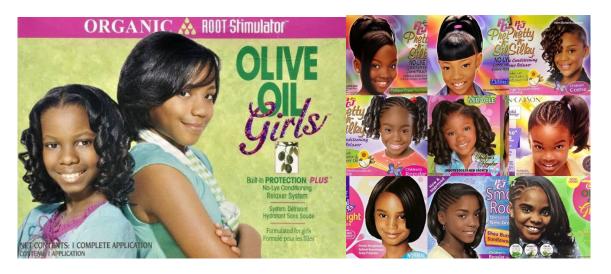


- 44. For decades, Defendants continued to market chemical hair relaxer products to black women, but in the 1990s, the industry began to target young black girls with the first hair relaxer for girls, "Just for Me" by Soft & Beautiful.
- 45. In 1993, the infamous Just for Me commercial premiered featuring LaTavia Robinson, who later joined the famous music group Destiny's Child. Young girls sang and danced to the song with the lyrics: "Just for Me—the no-lye conditioner relaxing cream," again marketing the relaxer as safe because it did not contain lye.



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- 46. Other manufacturers followed suit, creating other chemical hair relaxers for young girls, including the PCJ hair relaxer, also introduced in the early 1990s.
- 47. Young black girls became enamored with the girls depicted on the hair relaxer boxes, believing they could achieve the same look if they used the hair relaxer.



- 48. It was recently discovered from a "Where Are They Now" interview that several women depicted on the hair relaxer boxes did not have chemically straightened hair and never used the chemical relaxer products.
- 49. The hair relaxer manufacturing companies spent billions of dollars targeting black women and girls:









50. Although the hair relaxer manufacturing companies marketed the no-lye relaxers as safe because they did not contain sodium hydroxide, the Defendant companies failed to warn consumers about the harmful chemicals in the hair relaxers, including endocrine-disrupting chemicals ("EDCs").

ENDOCRINE DISRUPTING CHEMICALS

51. Endocrine-Disrupting Chemicals disrupt the endocrine system, a network of organs and glands that produce, store, and secrete hormones. The glands, controlled by stimulation from the nervous system and chemical receptors in the blood and hormones, help maintain the body's homeostasis by regulating the functions of organs.

- 52. These glands help maintain the body's homeostasis by regulating the functions of the organs in the body, including but not limited to cellular metabolism, reproduction, sexual development, sugar and mineral hemostasis, heart rate, and digestion.
- 53. EDCs can disrupt different hormones by mimicking or interfering with a natural hormone, which can trick the cellular hormone receptor into thinking that the EDC is the hormone the cellular hormone receptor responds to.
- 54. This can cause the creation of excess hormones or deficient hormones and can cause adverse effects, including causing abnormalities in sex organs, early puberty, endometriosis, and hormonally responsive cancers, among other hormonally related diseases.
- 55. A group of EDCs called xenoestrogens mimic estrogen by pretending to be biologically created estrogen. Over time, these estrogen mimickers become difficult to detoxify in the liver.
- 56. Chemical hair relaxers contain various types of endocrine disrupting chemicals, including phthalates and parabens.

Phthalates

- 57. Phthalates were developed in the 1920s to make plastics more durable and malleable, but today are used in cosmetics to create color and make fragrances last longer.
- 58. Phthalates are used in hair relaxers to make the hair more flexible after applying the product.
- 59. Phthalates interfere with estrogen receptors and contribute to reproductive problems such as early puberty in girls, menopausal symptoms, infertility, metabolic syndrome and thyroid conditions, cognitive disorders, and cancer.

- 60. Di-2-ethylheylphtyalate ("DEHP") is a phthalate used in plastics to make them more flexible. Testing of chemical hair relaxers found the presence of DEHP.
- 61. In the Report of Carcinogens, Fifteenth Edition, the U.S. Department of Health and Human Services determined that there is "clear evidence" of carcinogenicity of DEHP in both male and female rats and that it is "reasonably anticipated to be a human carcinogen."
- 62. Similarly, the U.S. Environmental Protection Agency classified DEHP as a "B-2; probable human carcinogen" in its Chemical Assessment Summary.

Parabens

- 63. Parabens are a class of chemicals used as preservatives in cosmetic products to prevent the growth of harmful bacteria and mold and therefore preserve the product's shelf life. There are common parabens, including methylparaben, propylparaben, butylparaben, and ethylparaben.
- 64. Parabens are EDCs that also bind to estrogen receptors and mimic estrogen, causing estrogen dominance and health conditions such as reproductive issues and hormonal cancers.
- 65. A recent study detected three different parabens in hair relaxer kits: methylparaben, ethylparaben, and butylparaben. Testing of hair relaxer kits revealed high concentrations of this parabens.
- 66. An August 2019 study examined tissue samples from tumors of women diagnosed with endometrial cancer. It concluded that paraben molecules were more frequently detected in endometrial carcinoma tissue samples compared to normal endometrium.
- 67. Studies have shown that black women have elevated levels of phthalates in their urine compared to white women. Additionally, a May 2021 study showed higher levels of

parabens and phthalates detected in the urine of women diagnosed with endometrial cancer than women without cancer.

- 68. In a 2018 study, thirty-five different EDCs were present in three hair relaxer kits, including phthalates, parabens, bisphenol A ("BPA"), cyclosilicates, triclosan, and diethanolamine. Of the chemicals found to be present, 84% were not listed as ingredients on the hair relaxer labels. Each of these individual EDCs is well documented to increase estrogen and cause hormone-sensitive cancers.
- 69. The synergistic effects of the combination of the known EDCs in the hair relaxers and the unknown chemicals hidden under the ingredient title "fragrances" further increase the risk of developing hormonally driven cancers.
- 70. Moreover, because there is higher percutaneous absorption of chemicals in the scalp compared with other areas of the skin such as on the forearm, palm, and abdomen, there is an even greater risk of developing cancer from carcinogens placed on the scalp/hair.

PLAINTIFF'S HAIR RELAXER USE

- 71. Plaintiff, Merle Carter, M.D., consistently and frequently used Hair Relaxers, starting in 1976.
- 72. For decades, Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen, which are manufactured and advertised by the named Manufacturer Defendants.
- 73. Plaintiff used different variations of Avlon's Affirm hair relaxers, including but not limited to Affirm Crème Relaxer and Affirm Sensitive Scalp Relaxer.
- 74. Plaintiff used different variations of L'Oréal Defendants' Dark & Lovely hair relaxer, including but not limited to Dark & Lovely Regular No-Lye Hair Relaxer.

- 75. Plaintiff used different variations of L'Oréal Defendants' Optimum hair relaxer, including but not limited to Optimum Salon Haircare Defy Breakage No-Lye Relaxer.
- 76. Plaintiff used different variations of L'Oréal Defendants' Bantu hair relaxer, including but not limited to Bantu No Base Relaxer.
- 77. Plaintiff used different variations of L'Oréal Defendants' Precise hair relaxer, including but not limited to Ultra Precise No-Lye Conditioning Relaxer.
- 78. Plaintiff used different variations of Strength of Nature Defendants' Dr. Miracle hair relaxer, including but not limited to Dr. Miracle's No Lye Relaxer Kit and Dr. Miracle's New Growth No Lye Relaxer Kit.
- 79. Plaintiff used different variations of Strength of Nature Defendants' Motions hair relaxer, including but not limited to Motions No Lye Relaxer, Motions Classic Formula Smooth & Silken Hair Relaxer, and Motions Silkening Shine No Lye Relaxer Kit.
- 80. Plaintiff used different variations of Strength of Nature Defendants' Ultra Sheen hair relaxer, including but not limited to Ultra Sheen No Lye Relaxer.
- 81. She reapplied the relaxer to newly grown hair approximately every four to eight weeks at a hair salon or at home using home hair relaxer kits.
- 82. Plaintiff purchased multiple hair relaxer home kits from ACME Markets at 7010 Germantown Avenue, Philadelphia, Pa 19119 and 7700 Crittendon Street, Philadelphia, Pa, 19118, starting in approximately 2004, including, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen.
- 83. Plaintiff purchased multiple hair relaxer home kits from CVS Pharmacies at 6701 Ridge Avenue, Philadelphia, Pa 19128 and 7605 Lincoln Drive, Philadelphia, Pa 19119 starting in approximately 2004, including, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen.

84. Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen hair relaxers purchased and used by the Plaintiff to apply to her hair contained endocrine disrupting chemicals, including phthalates, parabens, and other carcinogenic chemicals.

85. Plaintiff has reason to believe that L'Oréal Defendants developed, tested, assembled, marketed, manufactured, and sold other brands of chemical hair relaxer products known to L'Oreal Defendants, but unknown to Plaintiff, that contained endocrine disrupting chemicals.

86. Plaintiff has reason to believe that Strength of Nature Defendants developed, tested, assembled, marketed, manufactured, and sold other brands of chemical hair relaxer products known to Strength of Nature Defendants, but unknown to Plaintiff, that contained endocrine disrupting chemicals.

87. Plaintiff has reason to believe that Defendant Avlon developed, tested, assembled, marketed, manufactured, and sold other brands of chemical hair relaxer products known to Defendant Avlon, but unknown to Plaintiff, that contained endocrine disrupting chemicals.

88. The Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen hair relaxers purchased and used by the Plaintiff increased the risk of harm and/or was a substantial contributing factor to her development of endometrial cancer.

HAIR RELAXERS LINKED TO UTERINE AND ENDOMETRIAL CANCERS

89. The uterus comprises two main parts: the endometrium and the myometrium.

Cancers in the uterus muscle layer are referred to as uterine sarcoma.

90. Endometrial cancer is a carcinoma that begins in the endometrium lining of the uterus.

- 91. Endometrial cancer is one of the three most common cancers in females and is the most common form of uterine cancer.
- 92. There are two types of endometrial cancers. Type 1 endometrial cancer tumors are classified as endometroid adenocarcinoma and are linked to excess estrogen in the body.
- 93. Type 2 endometrial cancer tumors include uterine serous, clear cell, and squamous cell carcinomas.
- 94. Type 1 endometrial cancer is far more common than Type 2, and accounts for approximately 90% of diagnosed endometrial cancer.
- 95. Type 1 endometrial cancer incidence increased significantly between 1999 and 2006 compared to Type 2 endometrial cancers, which remained relatively stable during those years.
- 96. Some endometrial cancers begin with a pre-cancerous condition called endometrial hyperplasia, which practitioners consider an early stage of endometrial cancer.
- 97. One of the main risk factors for endometrial and other uterine cancers include changes in the balance of female hormones in the body. Accordingly, exposure to EDCs is a risk factor for developing hormone-sensitive cancers such as endometrial cancer.
- 98. Black women are twice as likely to be diagnosed with uterine cancer than white women and have poorer prognoses when diagnosed.
- 99. For decades, research has shown that black women are far more likely to develop reproductive cancers and other reproductive diseases.
- 100. Additionally, black women are two to three times more likely to develop uterine leiomyomata, also known as fibroid tumors, than white women.

101. Endometriosis is an estrogen-dependent reproductive disease that causes growth of the endometrial glands and stroma outside of the uterus, causing chronic inflammation.

102. Endometriosis is a risk factor for endometrial cancer, and as with other reproductive diseases, it is far more prevalent in black women.

103. In addition to the research demonstrating the significant disparity between black and white women in the development of reproductive disease, research also establishes that black girls go through puberty and start menstruating earlier than girls of other races.

104. Scientists from the University of California, San Francisco, and Berkeley conducted a continuing study of over 1,200 girls tracked between 2005 and 2011. They concluded that by age seven, 23% of black girls started to develop breasts, compared with just 10% of white girls.

105. Researchers have been baffled by the inability to identify why black girls are menstruating so early and why black women are developing reproductive issues at alarming rates.

106. According to NBC News, approximately 95% of black women reported using chemical hair straightening products, such as hair relaxers. Many of these women also said they began using the products in early childhood, sometimes as young as five or six years old, and continued frequent use through adulthood.

107. Although there is so much diversity within the black female community, one commonality between generations of black women is using permanent chemical hair relaxers to straighten their hair.

108. In October 2022, the results of a groundbreaking study were published in the Journal of the National Cancer Institute by Dr. Che-Jung Chang and others regarding the link between hair relaxer use and the development of uterine cancers.

109. The study found that women who frequently used hair relaxers were more than twice as likely to develop uterine cancers compared to women who did not use chemical hair relaxers. Specifically, the study found that 1.64% of women who never used hair relaxer products would develop uterine cancer before age 70. However, for women who ever used hair relaxers, the risk of uterine cancer increased to 1.80% and drastically increased to 2.55% for women who frequently used hair relaxers. ¹

110. Among women who never used straighteners in the 12 months prior to baseline, approximately 1.64% were predicted to develop uterine cancer by age 70 years. The estimated risk was 1.18% (95% CI for risk difference = 0.15% to 2.54%) higher for the women with ever use, and 2.41% (95% CI for risk difference = 0.52% to 4.80%) higher for those with frequent use compared with women who never used hair relaxers.

- 111. According to the researchers, "These findings are consistent with prior studies supporting a role of straighteners in increased risk of other female, hormone-related cancers."
- 112. The researchers further stated that "Although no differences in the hazard ratios between racial and ethnic groups were observed, the adverse health effects associated with straightener use could be more consequential for African American and/or Black women because of the higher prevalence and frequency of hair product use, younger age of initiating use, and harsher chemical formulations."²

PLAINTIFF'S CANCER DIAGNOSIS

113. In November 2015, at the age of forty-nine years old, Dr. Carter underwent endometrial sampling which revealed a diagnosis of endometrial carcinoma.

¹ 4 Che-Jung Chang, et al., Use of Straighteners and Other Hair Products and Incident Uterine Cancer, Journal of the National Cancer Institute, Oct. 17, 2022, https://pubmed.ncbi.nlm.nih.gov/36245087.

² Id.

114. Dr. Carter was advised to undergo a radical hysterectomy and bilateral oophorectomy.

115. In December 2015, Dr. Carter underwent a total robotic laparoscopic hysterectomy and bilateral oophorectomy, and surgical pathology confirmed a diagnosis of well-differentiated endometrioid adenocarcinoma, FIGO 1-2.

116. Plaintiff's use of the hair relaxers manufactured and sold by the Defendants, increased the risk of harm and/or was a substantial contributing factor to her development of endometrial cancer.

117. Dr. Carter suffered significant pain as a result of her cancer diagnosis and subsequent hysterectomy.

DISCOVERY RULE

118. Despite knowing that their chemical hair relaxer products contain large amounts of EDCs that are more likely to enter the body when applied through the scalp, the Defendants failed to warn of the potential for the use of their products to cause cancer and reproductive issues.

119. Plaintiff reserves the right to plead and invoke the discovery rule. Plaintiff's endometrial cancer is a latent injury. Accordingly, under such circumstances, Plaintiff could not have reasonably been expected to know the cause of her endometrial cancer. Plaintiff lacked the salient facts behind the cause of her endometrial cancer, and Plaintiff could not have been aware of the salient facts through reasonable diligence until less than two years before the filings of Plaintiff's action.

120. Further, Plaintiff did not and could not have known that her injuries were caused by Defendants' conduct in the exercise of reasonable diligence.

121. The carelessness and recklessness in the acts and omissions of the Defendants, as outlined and averred throughout the entirety of this Complaint, was a factual cause of and/or placed Plaintiff at an increased risk of harm for and/or was a substantial factor in causing and did in fact directly and proximately cause the severe, permanent and grievous personal injuries and damages to Plaintiff.

COUNT I STRICT LIABILITY – DESIGN DEFFECT (Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, Defendant Avlon, ACME Defendants and CVS Defendants)

- 122. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
- 123. At all relevant times, Defendants were engaged in the business of manufacturing, formulating, creating, designing, testing, labeling, packaging, supplying, marketing, promoting, selling, and advertising relaxers like Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen.
- 124. Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen frequently and consistently.
- 125. Defendants marketed and advertised Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen as a safe product for use by consumers, specifically to black women and women of color, including Plaintiff, despite knowing that they contained EDCs and other harmful chemicals.
- 126. At all relevant times, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen reached their intended consumers, including Plaintiff, without substantial change in the condition in which the Defendants designed, produced, manufactured, sold, distributed, labeled, and marketed them.

- 127. Manufacturer Defendants had a duty to create Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen in a way that was not unreasonably dangerous for their normal, intended, or anticipated use.
- 128. Retailer Defendants had a duty to ensure that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen was not defective and safe for its intended use before selling said products to consumers, such as Dr. Carter.
- 129. Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were defective as they were formulated, designed, and manufactured with carcinogens.
- 130. The Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen were defective because their carcinogenic properties made them unreasonably dangerous in that they were dangerous to an extent beyond that which an ordinary consumer, such as the Plaintiff, would contemplate.
- 131. Further, the magnitude of the danger associated with use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen's Best relaxers outweighs the utility of these products.
- 132. The dangers of the Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen were unknown to the ordinary consumer.
- 133. Plaintiff did not know of these dangers. If she would have known, these dangers would have been unacceptable to her.
- 134. Defendants knew, or should have known, of the unreasonable risks of harm associated with the use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle,

and Ultra Sheen, namely their unreasonably dangerous and carcinogenic properties and their propensity to cause cancer.

- 135. At the time of Plaintiff's exposure, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were being used in a normal, intended, or anticipated manner, as a chemical hair relaxer product.
- 136. Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers without knowledge of their dangerous characteristics, specifically the carcinogenic risks associated with use of the products.
- 137. The foreseeable risks associated with use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers exceeded the alleged benefits associated with their design and formulation.
- 138. Defects in Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxer products increased the risk, and were a producing cause, proximate cause, and substantial factor in the development of Plaintiff's cancer.
- 139. As a result of the Defendants' reckless and conscious disregard for the health and safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and omissions:
 - a. Economic losses, including medical care and lost earnings; and,
 - b. Noneconomic losses, including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment of life, impairment of quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of

suit, delay damages, compensatory damages, punitive damages, and such other relief as this Honorable Court may deem appropriate.

COUNT II STRICT LIABILITY – FAILURE TO WARN (Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, Defendant Avlon, ACME Defendants and CVS Defendants)

- 140. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
- 141. Plaintiff brings this strict liability claim against Defendants for failure to warn about the toxic carcinogenic chemicals in their hair relaxer products.
- 142. At all relevant times, Defendants engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and/or promoting Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, which are defective and unreasonably dangerous to its consumers, including Plaintiff because they do not contain adequate warnings or instructions regarding the dangerous carcinogenic chemicals contained in the relaxer products.
- 143. The Defendants had a duty to warn of the risks associated with using their hair relaxer products.
- 144. Defendants knew, or should have known, of the unreasonable risks of harm associated with the use of their chemical hair relaxer products, namely their unreasonably dangerous and carcinogenic properties and their propensity to cause cancer.
- 145. However, Defendants purposefully marketed their no-lye hair relaxer products as safe because they did not contain "lye" or sodium hydroxide but failed to warn consumers about the carcinogenic endocrine-disrupting chemicals in the hair relaxers.

- 146. Defendants disseminated information that was inaccurate, false, and misleading and that failed to communicate accurately or adequately the comparative severity, duration, and extent of the risk of injuries associated with use and frequent use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers; and continued to promote the efficacy of the relaxers, even after they knew or should have known of the unreasonable risks from use; and concealed, downplayed, or otherwise suppressed, through aggressive marketing and promotion, any information or research about the risks and dangers of use of the relaxers.
- 147. Defendants failed to exercise reasonable care to warn of the dangerous carcinogenic risks associated with the use of its hair relaxers.
- 148. Plaintiff reasonably relied on the skill, superior knowledge, and judgment of the Defendants.
- 149. Had Defendants properly disclosed the risks associated with use of their chemical hair relaxers, Plaintiff could have chosen not to use the chemical hair relaxer and avoid the risk of developing cancer from exposure to the hair relaxing chemicals.
- 150. As a result of the absence of warning or instruction by Defendants regarding the significant health-and-safety risks associated with the use of their hair relaxers, Plaintiff was unaware that the Defendants' hair relaxers were unreasonably dangerous and had carcinogenic properties, since such information was not known to the general public.
- 151. Defendants' failure to warn regarding the dangers associated with use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers increased the risk, and was a producing cause, proximate cause, and substantial factor in the development of Plaintiff's cancer.

- 152. As a result of the Defendants' reckless and conscious disregard for the health and safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and omissions:
 - a. Economic losses, including medical care and lost earnings; and
 - b. Noneconomic losses, including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment of life, impairment of quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of suit, delay damages, compensatory damages, punitive damages, and such other relief as this Honorable Court may deem appropriate.

<u>COUNT III</u> NEGLIGENCE

(Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, and Avlon Defendant)

- 153. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
- 154. At all relevant times, Defendants engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and/or promoting Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen.
- 155. Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen.
- 156. Defendants had a duty to exercise reasonable care in the research, design, manufacturing, packaging, marketing, advertisement, supply, promotion, sale, and distribution of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers,

including a duty to assure that the products would not cause users to suffer unreasonable dangerous side effects, including developing cancer.

- 157. Defendants had a duty to provide true and accurate information and warnings concerning the risks of using Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers.
- 158. Defendants failed to exercise reasonable care in that they knew, or should have known, of the unreasonable risks of harm associated with the use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers and the propensity for the Hair Relaxers to cause cancer.
- 159. Defendants also knew, or in the exercise of reasonable care, should have known, that consumers and users of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were unaware of the carcinogenic risks associated with use of the product.
- 160. Defendants' negligence includes, but is not limited to, the following acts and/or omissions:
 - Failing to sufficiently test Affirm, Dark & Lovely, Motions, Optimum,
 Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers to determine whether
 they were safe for their intended use;
 - b. Failing to sufficiently test Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers to determine their carcinogenic properties after learning that their formulations could be carcinogenic;

- c. Marketing, advertising, and recommending the use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers without sufficient knowledge as to their dangerous propensities;
- d. Representing that Affirm, Dark & Lovely, Motions, Optimum, Precise,
 Bantu, Dr. Miracle, and Ultra Sheen relaxers were safe for their intended
 use when they were not;
- e. Failing to disclose the risk of serious harm associated with use Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers;
- f. Failing to provide adequate instructions, guidelines, and safety precautions to protect the health of those persons whom Defendants could reasonably foresee would use Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen;
- g. Failing to use reasonable and prudent care in the design, development, and manufacture of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, so as to avoid the risk of serious harm associated with use;
- h. Failing to sufficiently test the "inert" ingredients and/or adjuvants, including the chemicals classified as fragrances contained within Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, and the propensity of these ingredients to render the relaxers toxic or to increase the toxicity of the relaxers;

- Systematically suppressing or downplaying contrary evidence about the risks, incidence, and prevalence of the side effects of exposures to Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, such as side effects of exposure to endocrine-disrupting chemicals;
- j. Failing to disclose the risk of serious harm associated with use of endocrinedisrupting chemicals either alone or when included Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen; and,
- k. Continuing to manufacture and sell Affirm, Dark & Lovely, Motions,
 Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, with the
 knowledge that they were unreasonably safe and dangerous.
- Marketing, advertising, and recommending the use Affirm, Dark & Lovely,
 Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers
 without sufficient knowledge as to their dangerous propensities;
- m. Representing that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were safe for their intended use when they were not;
- Failing to disclose the risk of serious harm associated with use of Affirm,
 Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra
 Sheen relaxers;
- o. Failing to provide adequate instructions, guidelines, and safety precautions to protect the health of those persons whom Defendants could reasonably

- foresee would use Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers;
- p. Representing that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were safe, specifically because they did not contain "Lye", sodium hydroxide, for their intended use when they were not;
- q. Failing to disclose the risk of serious harm associated with use of Affirm,
 Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra
 Sheen relaxers;
- r. Continuing to manufacture and sell Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, with the knowledge that the relaxers were unreasonably safe and dangerous.
- 161. It was reasonably foreseeable that consumers, including Plaintiff, would suffer injury and possibly die as a result of Defendants' failure to exercise reasonable care in the manufacturing, marketing, promotion, labeling, distribution, and sale Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers.
- 162. Defendants' negligent decisions to market and distribute Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers increased the risk of harm, and was a producing cause, proximate cause, and substantial factor of the development of Plaintiff's cancer.
- 163. As a result of the Defendants' reckless and conscious disregard for the health and safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and omissions:

- a. Economic losses, including medical care and lost earnings; and,
- b. Noneconomic losses, including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment of life, impairment of quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of suit, delay damages, compensatory damages, punitive damages, and such other relief as this Honorable Court may deem appropriate.

COUNT IV BREACH OF IMPLIED WARRANTIES (Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, Defendant Avlon, ACME Defendants and CVS Defendants)

- 164. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
- 165. At all relevant times, Defendants L'Oréal Defendants and Strength of Nature Defendants were engaged in the business of manufacturing, formulating, creating, designing, testing, labeling, packaging, supplying, marketing, promoting, selling, advertising, and otherwise introducing Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers that Plaintiff used into the stream of commerce.
- 166. At the time L'Oréal Defendants and Strength of Nature Defendants, marketed, sold, and distributed its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers for use by Plaintiff, Defendants knew of their intended use and implicitly warranted that the products were of merchantable quality and safe and fit for the use for which they were intended, specifically to chemically straighten hair.

- 167. Before the time of Plaintiff's use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon impliedly warranted to consumers, including Plaintiff, that its relaxers were of merchantable quality and safe and fit for the use for which they were intended; specifically, to chemically straighten hair.
- 168. L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon, however, failed to disclose that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers have dangerous propensities when used as intended and that the use of the relaxers carry an increased risk of developing severe injuries, including Plaintiff's cancer.
- 169. Plaintiff reasonably relied upon the skill, superior knowledge, and judgment of L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon, and upon their implied warranties that its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were of merchantable quality and fit for their intended purpose or use.
- 170. Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were expected to reach, and did in fact reach, consumers and/or users, including Plaintiff, without substantial change in the condition in which they were manufactured and sold by L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon.
- 171. At all relevant times to this litigation, Defendants were aware that consumers and users of its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, including Plaintiff, would use the products as marketed; therefore, Plaintiff was a

foreseeable user of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers.

- 172. Defendants intended that its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers be used in the manner in which Plaintiff was exposed, and Defendants implicitly warranted their product to be of merchantable quality, safe, and fit for this use, despite the fact that the relaxers were not adequately tested and/or researched.
- 173. In reliance on Defendants' implied warranty, Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers as instructed and labeled and in the foreseeable manner intended, recommended, promoted, and marketed by Defendants.
- 174. Plaintiff could not have reasonably discovered or known of the risks of serious injury associated with Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers.
- 175. Defendants breached their implied warranty to Plaintiff in that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were not of merchantable quality, safe, or fit for their intended use, an/or adequately tested.
- 176. Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers have dangerous propensities when used as intended and anticipated and can cause serious injuries, including the cancer Plaintiff sustained.
- 177. The harm caused by Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers far outweighed their benefits, rendering the products more dangerous than an ordinary consumer or user would expect and more dangerous than alternative products.

178. As a direct and proximate result of Defendants' wrongful acts and omissions Plaintiff has suffered severe and permanent physical and emotional injuries.

179. As a result of the Defendants' reckless and conscious disregard for the health and safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and omissions:

a. Economic losses, including medical care and lost earnings; and

Noneconomic losses, including physical and mental pain and suffering,
 emotional distress, inconvenience, loss of enjoyment of life, impairment of
 quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of suit, delay damages, compensatory damages, punitive damages, and such other relief as this Honorable Court may deem appropriate.

Respectfully submitted,

KLINE & SPECTER, P.C.

By:

SHĀNIN SPECTER, ESQUIRE TOBI L. MILLROOD, ESQUIRE BRADEN R. LEPISTO, ESQUIRE SHERRELL L. DANDY, ESQUIRE Attorneys for Plaintiffs

Dated: May 22, 2024

VERIFICATION

I, Dr. Merle Carter, hereby verify that I am the Plaintiff in the foregoing action; that the

attached Complaint is based upon information which I have furnished to my counsel and

information which has been gathered by my counsel in the preparation of the lawsuit. The

language of the Complaint is that of counsel and not of affiant. I have read the Complaint and to

the extent that the allegations therein are based upon information I have given counsel, they are

true and correct to the best of my knowledge, information, and belief. To the extent that the

contents of the Complaint are that of counsel, I have relied upon counsel in making this

Verification. I understand that false statements made herein are made subject to the penalties

of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date: <u>5/22/2024</u>

Dr. Merle Carter, Plaintiff

EXHIBIT A-3



238 SOUTH 45 TH/SIDEE 47-AB PHILADELPHIA, PA 19107 PHONE: (215) 546-7400

Document 1-1

Filed 06/24/24

Page 45 of 248

Merle Carter

-VS-L'Oreal USA, Inc, et al

COURT Court of Common Mennsylvania Philadelph Count CASE NUMBER 2405@26

AFFIDAVIT

State of Pennsylvania County of Philadelphia

B&R Control # CS208232.03 Reference Number

Nipsey Mitchell, being duly sworn according to law, deposes and says that he/she is the process server/sheriff herein named, and that the facts set forth below are true and correct to the best of their knowledge, information and belief.

On 5/23/2024 we received the **Complaint** for service upon:

CVS Pharmacy at 6701 Ridge Avenue, Philadelphia, PA 19128.

Service was NOT SERVED on 05/23/2024 at 4:30 PM, for the reason described below:

REFUSED SERVICE. SPOKE TO 3 MANAGERS AND THEY ALL SAID TO SEND TO CORPORATE.

Process Server/Sheriff

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

ATTEMPTS:

Client Phone (215) 772-1000 BR Serve By: 05/28/2024 Filed Date: 05/22/2024

Sherrell L. Dandy, Esquire Kline & Specter, P.C. 1525 Locust Street 19th Floor Philadelphia, PA 19102



EXHIBIT A-4



Document 1-1

Filed 06/24/24

Page 47 of 24

National Association of Professional Process Servers

Merle Carter

-VS-

L'Oreal USA, Inc, et al

Pleas COURT Court of Common Pleas Philadelpha Sunty Civil CASE NUMBER 2405026

AFFIDAVIT

State of Pennsylvania County of Philadelphia

B&R Control # CS208232.02 Reference Number

James Davis, being duly sworn according to law, deposes and says that he/she is the process server/sheriff herein named, and that the facts set forth below are true and correct to the best of their knowledge, information and belief.

On 5/23/2024 we received the Complaint and that service was effected upon Acme Markets at 7700 CRITTENDEN STREET, PHILADELPHIA, PA 19118 on 5/24/2024 at 4:57 PM, in the manner described below:

By service upon: An individual, (MANAGER) as agent or person in charge of office or usual place of business, who refused to provide their name.

Description:

Other:

Gender: MALE Race/Skin: WHITE

Weight: Age:

Height: Over 6ft5in

Hair: BROWN Glasses:No

Service Notes:

Process Server/Sheriff

ATTEMPTS:

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Client Phone (215) 772-1000

Filed Date:

05/22/2024

BR Serve By: 05/28/2024

Sherrell L. Dandy, Esquire Kline & Specter, P.C. 1525 Locust Street 19th Floor Philadelphia, PA 19102



EXHIBIT A-5



SQUZ!24TH/STREF47-AB PHILADELPHIA, PA 19107 PHONE: (215) 546-7400

Document 1-1

Filed 06/24/24

Page 49 of 24

National Association of Professional Process Servers

Merle Carter

-VS-

L'Oreal USA, Inc. et al

Pleas of Rennsylvania COURT Court of Compon Pleas Caunty Civil Philadelphi/ CASE NUMBER 2405026

AFFIDAVIT

State of Pennsylvania County of Philadelphia

B&R Control # CS208232.01 Reference Number

James Davis, being duly sworn according to law, deposes and says that he/she is the process server/sheriff herein named, and that the facts set forth below are true and correct to the best of their knowledge, information and belief.

On 5/23/2024 we received the Complaint and that service was effected upon Acme Markets at 7010 GERMANTOWN AVENUE, PHILADELPHIA, PA 19119 on 5/24/2024 at 4:45 PM, in the manner described below:

By service upon: An individual, (Assistant Manager) as agent or person in charge of office or usual place of business, who refused to provide their name.

Description:

Other:

Gender: MALE Race/Skin: WHITE

Weight: Age:

Height: 5ft9in - 6ft0in Hair: BROWN Glasses: Yes

Service Notes:

Process Server/Sheriff

ATTEMPTS:

Client

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Phone (215) 772-1000

Filed Date:

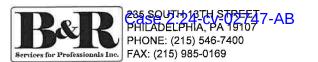
05/22/2024

BR Serve By: |05/30/2024

Sherrell L. Dandy, Esquire Kline & Specter, P.C. 1525 Locust Street 19th Floor Philadelphia, PA 19102



EXHIBIT A-6



Filed 06/24/24

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Merle Carter

-VS-L'Oreal USA, Inc., et al

COURT Court of Companie Pleas Pennsylvania Philadelphia Sunty - Civil CASE NUMBER 2405026

AFFIDAVIT

State of Pennsylvania County of Philadelphia

B&R Control # CS208232.04 Reference Number

James Davis, being duly sworn according to law, deposes and says that he/she is the process server/sheriff herein named, and that the facts set forth below are true and correct to the best of their knowledge, information and belief.

On 5/23/2024 we received the Complaint and that service was effected upon CVS Pharmacy at 7065 LINCOLN DRIVE, PHILADELPHIA, PA 19119 on 5/24/2024 at 5:08 PM, in the manner described below:

By service upon: An individual, (STORE MANAGER) as agent or person in charge of office or usual place of business, who refused to provide their name.

Description:

Other:

Gender: MALE Race/Skin: BROWN

Age: Weight: Height: 5ft4in - 5ft8in Hair: BLACK

Glasses:No

Service Notes:

Process Server/Sheriff

ATTEMPTS:

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Client Phone (215) 772-1000

Filed Date:

05/22/2024

BR Serve By: 05/28/2024

Sherrell L. Dandy, Esquire Kline & Specter, P.C. 1525 Locust Street 19th Floor Philadelphia, PA 19102



EXHIBIT A-7

MERLE CARTER, M.D. 6608 LINCOLN DRIVE PHILADELPHIA, PA 19199

PLAINTIFF

V.

L'ORÉAL USA, INC., et al.,

DEFENDANTS.



Case ID. 240502672

ENTRY OF APPEARANCE

TO THE OFFICE OF JUDICIAL RECORDS:

Kindly enter my appearance in the above-captioned matter as counsel of record for Defendant CVS Pharmacy, Inc. (erroneously sued as "CVS Pharmacy 6701 Ridge Avenue" and "CVS Pharmacy 7065 Lincoln Drive").

Dated: June 13, 2024

ICE MILLER LLP

By:

Jacqueline M. Lesser (204622) 1735 Market Street, Suite 3900

Philadelphia, PA 19103 Telephone: (215) 982-5165

acquelline lesser

Email: jacqueline.lesser@icemiller.com

4884-2648-7751.1

Case ID: 240502672

EXHIBIT A-8

ICE MILLER LLP

Jacqueline M. Lesser, Esquire Attorney ID No: 204622

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Email: Jacqueline.Lesser@icemiller.com

Attorney for Defendant CVS Pharmacy, Inc. (erroneously sued as "CVS Pharmacy 6701 Ridge Avenue" and "CVS Pharmacy 7065 Lincoln Drive)

NOTICE TO PLEAD: Filed and Attested by the To: Plaintiff Office of Plaintiff You are hereby notified to plaintiff pm enclosed Preliminary Objections with twenty (20) days from service hereof you.

s/Jacqueline M. Lesser

Attorney for Defendant CVS Pharmacy, Inc. (erroneously sued as "CVS Pharmacy 6701 Ridge Avenue" and "CVS Pharmacy 7065 Lincoln Drive)

MERLE CARTER, M.D. 6608 LINCOLN DRIVE PHILADELPHIA, PA 19199

PLAINTIFF

V.

L'ORÉAL USA, INC., et al.,

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY, PENNSYLVANIA

Case ID: 240502672

DEFENDANTS.

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT BY CVS PHARMACY, INC. (ERRONEOUSLY SUED AS "CVS PHARMACY 6701 RIDGE AVENUE" AND "CVS PHARMACY 7065 LINCOLN DRIVE")

Pursuant to Pennsylvania Rule of Civil Procedure 1028, Defendant CVS Pharmacy, Inc.

("CVS") (erroneously also sued as "CVS Pharmacy 6701 Ridge Avenue" and "CVS Pharmacy

7065 Lincoln Drive"), by and through its undersigned counsel, respectfully submits its

1 .

¹ CVS Pharmacy, Inc. is the operating entity that ultimately controls and is responsible for the sale of products by CVS retail store locations in Pennsylvania. CVS Pharmacy 6701 Ridge Avenue and CVS Pharmacy 7065 Lincoln Drive located in Philadelphia are not proper defendants as they are retail store locations and are not legal entities. Notwithstanding these Preliminary Objections by CVS Pharmacy, Inc., CVS Pharmacy 6701 Ridge Avenue and CVS Pharmacy 7065 Lincoln Drive do not waive, and expressly reserve, the right to seek dismissal as improper parties at a later date.

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Preliminary Objections to Plaintiff's Complaint. Plaintiff has improperly sued CVS retail store

locations and has improperly attempted to serve CVS at these retail stores. Further, Plaintiff's

vague and conclusory allegations fall short of alleging any facts sufficient to show liability for

any of her claims on the part of CVS.

1. Plaintiff, Merle Carter, M.D., filed her Complaint on or about May 22, 2024,

attached here as Ex. A.

2. In her Complaint, Plaintiff alleges she used numerous hair relaxer products

including "different variations" of Dark & Lovely, Precise, Bantu, Optimum Care, Motions, Dr.

Miracle, Ultra Sheen, Affirm and other unspecified brands of chemical hair relaxer products every

four to eight weeks starting in approximately 1976. *Id.* at ¶¶ 27-29, 71-83.

3. Plaintiff allegedly purchased these unspecified variations of hair relaxer products

from local ACME Markets and CVS retail store locations within Pennsylvania. See id. at ¶¶ 82-

83.

4. Plaintiff alleges she developed endometrial cancer in November 2015 as a result

of her use of the "different variations" of hair relaxer products and their alleged endocrine-

disrupting chemicals. See id. at ¶¶ 30, 113. Plaintiff claims a study in 2022, seven years after her

diagnosis, shows that her use of hair relaxers caused her cancer. *Id.* at ¶¶ 108-112, 113.

5. Plaintiff asserts causes of action against all defendants based on strict liability –

design defect, strict liability - failure to warn, and breach of implied warranties. See generally

Compl.² Plaintiff asserts a negligence cause of action against only the manufacturing defendants.

See id. at ¶¶ 153-163.

² Plaintiff also brings a claim for negligence but not as to CVS.

6. Plaintiff alleges she purchased multiple hair relaxer kits from CVS starting in approximately 2004, including Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen. *Id.* at ¶ 83.

I. PRELIMINARY OBJECTIONS

- A. PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT PURSUANT TO P.A. R.C.P. 1028(A)(1) DUE TO IMPROPER SERVICE ON THE CVS RETAIL STORE DEFENDANTS.
- 7. Under Pennsylvania Rule of Civil Procedure 1028(a)(1), a preliminary objection may be asserted due to improper service of a writ of summons of a complaint.
- 8. In her Complaint, Plaintiff purports to name three CVS defendants: CVS Pharmacy, Inc., CVS Pharmacy 6701 Ridge Avenue and CVS Pharmacy 7065 Lincoln Drive.
- 9. CVS Pharmacy, Inc. is the operating entity that ultimately controls and is responsible for the sale of products by CVS retail stores. CVS Pharmacy 6701 Ridge Avenue and CVS Pharmacy 7065 Lincoln Drive are not proper defendants as they are retail store locations and are not legal entities. Ex. B at \P 5. CVS Pharmacy, Inc. is the only legal CVS entity and, therefore, is the only proper defendant.
- 10. As set forth in the attached Affidavit of CVS Pharmacy, Inc. CVS Pharmacy, Inc. is a foreign business corporation formed in Rhode Island and has its principal place of business in Rhode Island. Ex. B at \P 3. Accordingly, Plaintiff was required to serve CVS in accordance with Pennsylvania Rule of Civil Procedure 404.
- 11. On or about May 30, 2024, Plaintiff filed an Affidavit of Service purporting to have served "CVS Pharmacy at 7065 Lincoln Drive" with the Complaint by Personal Service on May 24, 2024, attached here as Ex. C.

- 12. While Plaintiff's Affidavit of Service suggests that she served CVS Pharmacy 7065 Lincoln Drive on May 24, 2024, Pennsylvania Rule of Civil Procedure 404 provides that "original process shall be served outside the Commonwealth within ninety days of the issuance of the writ or the filing of the complaint or the reissuance or the reinstatement thereof."
- 13. Pursuant to Rule 403 of the Pennsylvania Rules of Civil Procedure, "a copy of the process shall be mailed to the defendant by any form of mail requiring a receipt signed by the defendant or his authorized agent."
- 14. The retail store locations are not the proper defendants, nor are they authorized agents to accept service on behalf of CVS Pharmacy, Inc. Therefore, it is submitted that service by personal service upon an unidentified individual at the store locations is not proper service upon CVS. *See Salas v. Wal-Mart Stores East, Inc.*, 2015 WL 6737591*3 (Pa. Supr. Ct. August 7, 2015) (holding that service was not proper where service was made upon an individual who worked at the store location but was not "a person in charge of an open retail store" in compliance with Pa.R.Civ.P. 424.).³

WHEREFORE, for the reasons described above and in the accompanying brief, CVS respectfully requests that the Court sustain its preliminary objections and dismiss Counts I (Strict Liability – Design Defect), Count II (Strict Liability – Failure to Warn) and IV (Breach of Implied Warranties).

- B. PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH PA. R. CIV. P. 1019(A) AND 1020(A) AND FOR LACK OF SPECIFICITY UNDER PA.R.CIV.P. 1028(a)(3) COUNTS I, II, IV
- 15. The averments contained in the preceding paragraphs are incorporated herein by reference as if fully set forth herein.

³ CVS Pharmacy, Inc.—the only proper defendant—was served with the Complaint via certified mail on May 30, 2024. Ex. B at ¶ 7.

16. Pennsylvania Rule of Civil Procedure 1028(a)(2) provides for the filing of preliminary objections where a complaint fails "[t]o conform to law or rule of court." Pa.R.Civ.P. 1028(a)(2).

17. Rule of Civil Procedure 1019(a) in turn requires that the material facts on which a cause of action is based be stated in a concise and summary form. Pa.R.Civ.P. 1019(a).

18. Indeed, as explained by the Superior Court, "a pleader must set forth concisely the facts upon which his cause of action is based. The complaint must not only apprise the defendant of the claim being asserted, but it must also summarize the essential facts to support the claim." *Bouchon v. Citizen Care, Inc.*, 176 A.3d 244, 258 (Pa. Super. 2017) (*quoting Donaldson v. Davidson Bros., Inc.*, 144 A.3d 93, 103 (Pa. Super. 2016)).

- 19. Rule 1020(a) also provides that "[t]he plaintiff may state in the complaint more than one cause of action cognizable in a civil action against the same defendant." However, "[e]ach cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief." Pa.R.Civ.P. 1020(a).
- 20. With respect to Rule 1020(a), the Superior Court has observed that "[w]hile there is some authority that a single cause of action may be pled against two or more defendants who are alleged to be jointly and severally liable, that cannot be the case where the factual background underlying each defendant's liability is different." *Bouchon*, 176 A.3d at 258 (*citing General State Authority v. Lawrie and Green*, 356 A.2d 851, 854 (Pa. Commw. 1976)).
- 21. A complaint also "must apprise the defendant of the nature and extent of the plaintiff's claim so that the defendant has notice of what the plaintiff intends to prove at trial and may prepare to meet such proof with his own evidence." *Id.* (*quoting Discover Bank v. Stucka*, 33 A.3d 82, 86–87 (Pa. Super. 2011)).

22. In addition, Rule 1028(a)(3) of the Pennsylvania Rules of Civil Procedure, preliminary objections to a Complaint may be sustained where the pleading fails to plead with

sufficient specificity. See Pa.R.Civ.P. 1028(a)(3).

23. Pennsylvania is a fact pleading state. A complaint must "disclose 'material facts'

sufficient to enable the adverse party to prepare his case." Laudau v. Western Pennsylvania Nat'l

Bank, 282 A.2d 335, 339 (Pa. 1971). "Simple, vague and conclusory allegations" are not enough.

Id. at 340.

24. If Plaintiff "fails to connect any particular [defendant] to the cause" of her injuries,

the claim must fail. Cummins v. Firestone Tire and Rubber Co., 495 A.2d 963, 967 (Pa. Super. Ct.

1985). Joinder of multiple defendants requires Plaintiff to plead the appropriate elements for "each

defendant, separately and independently." Id. at 968. Without specific "identification, there can

be no allegation of . . . legal causation, and hence there can be no liability." *Id.* (finding that absent

connecting specific appellee and their product to the injury, appellant's claims for strict liability

failed for lack of specificity).

25. A complaint must contain essential material facts that support the claim against the

defendant, enough to allow the defendant to prepare a defense. See McShea v. City of Phila., 995

A.2d 334, 339 (Pa. 2010). If particular allegations are too vague, the defendant may make a

preliminary objection in the nature of a motion to strike that portion of the complaint. See Connor

v. Allegheny Hosp., 461 A.2d 600, 603 n.3 (Pa. 1983).

26. Plaintiff's Complaint against CVS fails to meet the requisite pleading standard

because her allegation that she purchased from CVS "unspecified" and "different variations" of

hair relaxer product(s) at an unspecified frequency across a twenty-year span, "starting in

approximately 2004", is overbroad and vague. *Compl.* at ¶ 6.

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27. In her Complaint, Plaintiff fails to provide any further details, and it remains unclear what particular products she purchased on how many occasions, and when. Plaintiff's allegations that she purchased hair relaxer products at CVS are so vague and ambiguous that CVS cannot determine the actual products purchased at CVS that Plaintiff used or the frequency with which she used those products purchased at CVS. Accordingly, CVS cannot determine the specific nature and scope of Plaintiff's claims against it and, therefore, cannot understand the specific basis on which Plaintiff seeks to recover.

28. Moreover, Plaintiff's Complaint repeatedly speaks collectively to "Defendants" without differentiating any conduct or claims as between or among them. *See Compl.* ¶¶ 123, 125, 129-130, 134, 138-139, 142-147, 149-152, 170-173, 175-179.

- 29. Plaintiff purports to name twelve defendants in this case, ranging from product manufacturers, retail companies, and retail store locations.
- 30. Despite significant differences between the defendants, each of Plaintiff's claims allege, with the exception of Count I, without factual support, that all "defendants" engaged in the same conduct, such as manufacturing the products.
- 31. For example, in Plaintiff's strict liability failure to warn claim, Count II, Plaintiff alleges that "Defendants had a duty to warn of the risks associated with using their hair relaxer products" and that "Defendants knew, or should have known, of the unreasonable risks of harm associated with the use of their chemical hair relaxer products, namely their unreasonably dangerous and carcinogenic properties and their propensity to cause cancer." *Id.* at ¶¶ 143-144.
- 32. However, Plaintiff does not, and cannot, plausibly assert that CVS manufactured the hair relaxer products. In fact, nowhere in the Complaint does Plaintiff allege any conduct attributable to CVS specifically.

- 33. The only allegation in Plaintiff's 179-paragraph Complaint that even mentions conduct attributable specifically to the "Retailer Defendants," which includes CVS as well as other Defendants, is that "Retailer Defendants had a duty to ensure that [their Products] w[ere] not defective and safe for its intended use before selling said products to consumers, such as Dr. Carter." *Id.* at ¶ 128. This allegation, however, lumps the retailer defendants together as one.
- 34. Given the vague averments in the Complaint directed at all defendants, it is impossible for CVS to ascertain which allegations of conduct and facts are directed to it specifically.
- 35. CVS is entitled to be informed of the specific conduct that Plaintiff believes is actionable as to CVS.
- 36. Plaintiff therefore must plead her claims with specificity so as to put CVS on notice of the nature and extent of Plaintiff's claims.

WHEREFORE, for the reasons described above and in the accompanying brief, CVS respectfully requests that the Court sustain its preliminary objections and dismiss Counts I (Strict Liability – Design Defect), Count II (Strict Liability – Failure to Warn) and IV (Breach of Implied Warranties).

- C. PRELIMINARY OBJECTIONS IN THE NATURE OF A DEMURRER TO PLAINTIFF'S COMPLAINT BASED ON LEGAL INSUFFICIENCY UNDER PA.R.CIV.P. 1028(A)(4).
- 37. The averments contained in the preceding paragraphs are incorporated herein by reference as if fully set forth herein.
- 38. Under Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure, the court may sustain objections based on demurrer due to legal insufficiency of the pleading. *See* Pa.R.Civ.P. 1028(a)(4).

39. When considering "preliminary objections in the nature of demurrer," all well pleaded "material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom." *Haun v. Cmty. Health Sys., Inc.*, 14 A.3d 120, 123 (Pa. Super. Ct. 2011); *see also Giffin v. Chronister*, 616 A.2d 1070, 1072 (Pa. Commw. Ct. 1992). Yet, "conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion" need not be accepted as true. *Giffin v. Chronister*, 616 A.2d at 1072.

- 40. For a strict liability claim, the Plaintiff must prove first that the product was defective and second that the product's "defect was a substantial factor in causing the injury." *Spino v. John S. Tilley Ladder Co.*, 696 A.2d 1169, 1172 (Pa. 1997) (emphasis added); *see also Charlton v. Toyota Indus. Equip.*, 714 A.2d 1043, 1046 (Pa. Super. Ct. 1998).
- 41. To prove breach of warranty under Pennsylvania law, Plaintiff must show that the defendant's breach caused the plaintiff's injury. *See Altronics of Bethlehem, Inc. v. Repco, Inc.*, 957 F.2d 1102, 1105 (3d Cir. 1992) (to carry the burden on a breach of warranty claim, plaintiff must show an "absence of other reasonable secondary causes").
- 42. Plaintiff fails to adequately plead causation for both her strict liability claims and her breach of warranty claim because her allegations are overbroad and lack specificity.
- Although Plaintiff alleges she purchased eight different hair relaxer products at two CVS locations, she contradicts that assertion by generally alleging that she used multiple unidentified hair relaxer products including "other brands" over a twenty year period. *Compl.*, ¶¶ 85-87. Plaintiff fails to provide any further details, and it remains unclear what particular products she purchased on how many occasions, and when. Without knowing precisely which products Plaintiff purchased at CVS and how often she purchased and used those products purchased at CVS, it is impossible to assess Plaintiff's claim that her injury was a result of the "link between

[the frequency of] hair relaxer use and the development of uterine cancers" allegedly found in the 2022 study cited by Plaintiff. As such, Plaintiff fails to plead that exposure to any product(s) purchased at CVS was a substantial cause of the complained injury.

- 44. In addition, Plaintiff's only allegation specific to CVS regarding strict liability is nothing more than a conclusory statement that "Retailer Defendants had a duty to ensure [hair relaxer products] w[ere] not defective and safe for its intended use before selling said products to consumers, such as Dr. Carter." *Id.* ¶ 128. Plaintiff only makes this argument regarding Count I, strict liability design defect, and makes no allegations against retailer defendants in Count II, strict liability failure to warn. *See id.* ¶¶ 140-152.
- 45. Though Plaintiff argues the retailer defendants, including CVS, had a duty to ensure the hair relaxer products were safe, no such duty exists in a strict liability claim. *See Barton v. Lowe's Home Ctrs., Inc.*, 124 A.3d 349, 354 (Pa. Super. 2015) (explaining that in *Tincher v. Omega Flex, Inc.*, 104 A.3d 328, 400-01 (Pa. 2014) the Pennsylvania Supreme Court declined to adopt the RESTATEMENT (THIRD) OF TORTS and instead reaffirmed the viability of 402A from the RESTATEMENT (SECOND)). Nonetheless, retailers like CVS have no duty to inspect products for latent defects and are not "liable to a customer for injuries caused by" such defects. *See Kratz v. Am. Stores Co.*, 59 A.2d 138, 138 (Pa. 1948) (stating that there is no duty on the part of the defendant to test and inspect the contents of the product before sale because that would be "wholly impractical").
- 46. Furthermore, in her claim for breach of warranty, Plaintiff fails to allege anything specific against the retailer defendants, including CVS. *Compl.* at ¶¶ 164-179. Instead, all allegations are made against the manufacturing defendants or "Defendants" collectively. *Id.* at ¶¶ 123, 125, 129-130, 134, 138-139, 142-147, 149-152, 170-173, 175-179.

47. Finally, Plaintiff's punitive damages claim against CVS should be dismissed. Punitive damages may be dismissed when the complaint fails to allege any facts other than "those which would constitute ordinary negligence." McDaniel v. Merck, Sharp & Dohme, 533 A.2d 436, 447-48 (1987) (affirming dismissal of punitive damages in response to preliminary objections because appellant failed to plead any facts in support of their overly conclusory statements of willful and wanton conduct). Punitive damages "may not be awarded for misconduct which constitutes ordinary negligence such as inadvertence, mistake and errors of judgment." Id. at 447.

48. Punitive damages are awarded only when conduct is "outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." Id. at 447 (citing RESTATEMENT (SECOND) OF TORTS, §908(2) (AM. L. INST. 2023).

49. Punitive damages are "appropriate to punish and deter only extreme behavior, and in those rare instances in which they are justified, they are subject to strict judicial control." Smith v. Reinhart Ford, 68 Pa. D. & C.4th 432, 439 (Ct. Com. Pl. 2004) (emphasis added) (finding punitive damages appropriate because intentional fraud was plead which inherently provides proof for "outrageous conduct").

50. The Court must look at the defendant's state of mind and consider whether there is an "evil motive." See Feld v. Merriam, 485 A.2d 742, 747-48 (Pa. 1984) (discussing generally the requirements for punitive damages under Pennsylvania's adoption of the RESTATEMENT (SECOND) OF TORTS guidelines).

51. If the defendant does not subjectively know of the risk, especially if the danger is not easily perceptible, actions or lack thereof could not be the result of an evil motive. See Feld v. Merriam, 485 A.2d 742, 748 (Pa. 1984); Hutchison ex rel. Hutchison v. Luddy, 896 A.2d 1260,

1266 (Pa. 2006) (applying *Feld v. Merriam's* interpretation of Pennsylvania's adoption of the Restatement).

- 52. Plaintiff fails to contend that CVS had "subjective appreciation of the risk" alleged, or that CVS was in any way malicious or evil in its action. *See Hutchison ex rel. Hutchison v. Luddy*, 896 A.2d at 1266. Plaintiff does not allege that CVS's conduct was willful, wanton, or reckless. *See generally Compl.*
- 53. Furthermore, Plaintiff's use of the "groundbreaking" study released twenty years after she allegedly began purchasing hair relaxer products at CVS bars the possibility that CVS had any subjective appreciation of the alleged risk required for punitive damages when Plaintiff was purchasing and/or using the product(s). CVS could not have had the evil motive required to support punitive damages when, by Plaintiff's own admission, there was no way for CVS to have knowledge of the alleged link between the product(s) and cancer.

II. CONCLUSION

CVS respectfully requests that this Court grant its Preliminary Objections to Plaintiff's Complaint and enter the attached Order.

Respectfully Submitted

ICE MILLER LLP

By: /s/ Jacqueline M. Lesser

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Identification No.: 204622
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Attorney for Defendant, CVS Pharmacy, Inc. (erroneously sued as "CVS Pharmacy 6701 Ridge Avenue" and "CVS Pharmacy 7065 Lincoln Drive").



EXHIBIT A

Document 1-1 Filed 06/24/24 Case 2:24-cv-02747-AB Page 68 of 248

KLINE & SPECTER, P.C.

(Attorney I.D. No.: 40928 office By: SHANIN SPECTER, ESQUIRE TOBI L. MILLROOD, ESQUIRE (Attorney I.D. No.: 77764) BRADEN R. LEPISTO, ESQUIRE (Attorney I.D. No.: 313586) SHERRELL L. DANDY, ESQUIRE (Attorney I.D. No.: 309348)

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215-772-1000

215-772-1359 (fax)

ATTORNEYS FOR PLAINTIFF

MERLE CARTER, M.D. 6608 LINCOLN DRIVE PHILADELPHIA, PA 19199

PLAINTIFF

V.

DEFENDANTS

L'ORÉAL USA, INC. 575 FIFTH AVENUE NEW YORK, NY 10017

AND

L'ORÉAL USA PRODUCTS, INC. 10 HUDSON YARDS NEW YORK, NY 10001

AND

SOFT SHEEN-CARSON, LLC 10 HUDSON YARDS NEW YORK, NY 10001

AND

STRENGTH OF NATURE, LLC 64 ROSS ROAD SAVANNAH, GA 31405

AND

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY, **PENNSYLVANIA**

JURY TRIAL DEMANDED

Page 1 of 37

GODREJ SON HOLDINGS, INC. 64 ROSS ROAD SAVANNAH, GA 31405

AND

AVLON INDUSTRIES, INC. 1999 NORTH 15TH STREET MELROSE PARK, IL 60160

AND

ACME MARKETS, INC. 75 VALLEY STREAM PARKWAY MALVERN, PA 19355

AND

ACME MARKETS 7010 GERMANTOWN AVENUE PHILADELPHIA, PA 19119

AND

ACME MARKETS 7700 CRITTENDEN STREET PHILADELPHIA, PA 19118

AND

CVS PHARMACY, INC. 1 CVS DRIVE WOONSOCKET, RI 02895

AND

CVS PHARMACY 6701 RIDGE AVENUE PHILADELPHIA, PA 19128

AND

CVS PHARMACY 7065 LINCOLN DRIVE PHILADELPHIA, PA 19119

NOTICE TO PLEAD

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service Philadelphia Bar Association 1101 Market Street, 11th Floor Philadelphia, PA 19107 (215) 238-6338

ADVISO

Le han demandado a used en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Referral Service Philadelphia Bar Association 1101 Market Street, 11th Floor Philadelphia, PA 19107 (215) 238-6338

CIVIL ACTION – COMPLAINT

Plaintiff, Merle Carter, M.D., through her undersigned counsel, Kline & Specter, P.C., hereby demands damages from the Defendants in a sum in excess of the local arbitration limits exclusive of interest, costs, and damages for prejudgment delay, upon the cause of action set forth below:

PARTIES

- 1. Plaintiff, Merle Carter, M.D., is an adult individual citizen and resident of the Commonwealth of Pennsylvania, residing therein at 6608 Lincoln Drive, Philadelphia, PA 19199.
- 2. Defendant, L'Oréal USA, Inc., is incorporated in Delaware with its principal place of business and headquarters located at 575 Fifth Avenue, New York, New York 10017.
- 3. Defendant, L'Oréal USA Products, Inc., is incorporated in Delaware with its principal place of business and headquarters located at 10 Hudson Yards, 347 Tenth Avenue, New York, New York 10001.
- 4. Defendant, SoftSheen-Carson, LLC, is a limited liability company organized in the state of New York with its principal place of business and headquarters located at 90 State St., Albany, New York 12207. Upon information and belief, SoftSheen-Carson, LLC's members and sole interested parties are L'Oréal USA, Inc. and L'Oréal S.A., L'Oréal's French owned company, with its headquarters and principal place of business located in France.
- 5. Defendant, Carson, Inc., D/B/A SoftSheen, is a corporation with its principal place of business and headquarters located at 2870 Peachtree Rd., Suite, 464, Atlanta, Georgia 40405.
- 6. Defendant, Carson (W.I.) Inc., D/B/A SoftSheen, is a corporation, with its headquarters located in Delaware at 251 Little Falls Drive, Wilmington, Delaware 19808.

7. Defendants L'Oréal USA, Inc., Loreal USA Products, Inc., SoftSheen-Carson,

LLC, Carson, Inc., and Carson (W.I.) Inc., will be collectively referred to as "L'Oréal Defendants."

8. Defendant Strength of Nature, LLC, is a corporation with its principal place of

business and headquarters located at 64 Ross Road, Savannah, Georgia 31405.

9. Defendant Godrej Consumer Products Limited is, and at all times relevant to this

action, a global corporation with its principal place of business located at Godrej One, Fourth Floor,

Pirojshanagar, Eastern Express Highway, Fikhroli (East), Mumbai 400 079, India. The company's

website references Strength of Nature as its base of operations in the U.S., which is located at 64

Ross Road, Savannah, Georgia, and process may be served upon its registered agent, Karen Sood,

6355 Peachtree Dunwood Road, Atlanta Georgia, 30328.

10. Defendants Strength of Nature, LLC and Godrej Consumer Products Limited, will

be collectively referred to as "Strength of Nature Defendants."

11. Defendant Avlon Industries, Inc. ("Avlon") is, and at all times relevant to this

action, a corporation with its principal place of business located at 1999 North 15th Street, Melrose

Park, Illinois 60160.

12. ACME Markets, Inc. is a corporation with its principal place of business and

headquarters located at 75 Valley Stream Parkway, #250, Malvern, PA 19355. At all times

relevant hereto, ACME Markets, Inc., conducted business as ACME Markets at 7010 Germantown

Avenue, Philadelphia, PA 19119 and 7700 Crittenden Street, Philadelphia PA, 19118.

13. Defendants ACME Markets, Inc., ACME Markets at 7010 Germantown Avenue,

and ACME Markets at 7700 Crittenden Street will be collectively referred to as "ACME

Defendants."

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14. Defendant CVS Pharmacy, Inc. ("CVS") is a corporation with its principal place of business and headquarters located at 1 CVS Drive, Woonsocket, RI 02895. At all times relevant hereto, CVS conducted business as CVS Pharmacy located at 6701 Ridge Avenue, Philadelphia, PA 19128 and the CVS Pharmacy located at 7605 Lincoln Drive, Philadelphia, PA 19119.

15. Defendants CVS Pharmacy, Inc., CVS Pharmacy at 6701 Ridge Avenue and CVS Pharmacy at 7605 Lincoln Drive will be collectively referred to as "CVS Defendants."

JURISDICTION

- 16. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
 - 17. This Court has original jurisdiction over this civil action.
 - 18. This Court has personal jurisdiction over the Defendants.
- 19. At all times relevant hereto, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon (Manufacturer Defendants) contracted with, entered agreements with, sold, shipped, and distributed hair relaxer products, including those products Plaintiff purchased and applied to her hair, to various companies and stores within the Commonwealth of Pennsylvania, including but not limited to Defendants, ACME Markets and CVS Pharmacy.
- 20. At all times relevant hereto, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon engaged in the business of manufacturing, making, distributing, creating, dispensing, selling, shipping, advertising, transporting, and marketing hair relaxer products which contained dangerous and harmful amounts of endocrine disrupting chemicals and other harmful substances to sell at ACME Markets and CVS Pharmacy.
- 21. At all times relevant hereto, ACME Markets and CVS Pharmacy conducted business in the Commonwealth of Pennsylvania by: (1) selling and distributing products and

merchandise, including Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle,

and Ultra Sheen (Hair Relaxer Brands), in the Commonwealth of Pennsylvania for the purpose of

realizing pecuniary benefit from those sales and distributions; (2) shipping products and

merchandise, including Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle,

and Ultra Sheen, directly into and through the Commonwealth of Pennsylvania; (3) engaging in

business in the Commonwealth of Pennsylvania; and/or, (4) owning, using, and/or possessing real

property situated in the Commonwealth of Pennsylvania.

22. At all times relevant hereto, L'Oréal Defendants, Strength of Nature Defendants,

and Defendant Avlon had, and continues to have, regular and systematic contact with and conducts

business in and from the Commonwealth of Pennsylvania, such that it has purposefully availed

itself of the laws of the Commonwealth of Pennsylvania and can reasonably expect to both sue

and be sued in Pennsylvania.

23. Additionally, L'Oréal Defendants, Strength of Nature Defendants, and Defendant

Avlon's presence in the Commonwealth of Pennsylvania satisfies the due process requirements

for Pennsylvania courts to exercise jurisdiction over it. Additionally, L'Oréal Defendants, Strength

of Nature Defendants, and Defendant Avlon consented to the exercise of jurisdiction over it by

Pennsylvania courts by registering to and conducting business from the Commonwealth of

Pennsylvania.

24. A federal court would not have jurisdiction over this case, as there is no federal

question under 28 U.S.C. § 1331 or complete diversity between the parties under 28 U.S.C. § 1332.

Therefore, this case is not removable to federal court under 28 U.S.C. § 1441 and 28 U.S.C. §

1446.

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25. Venue is proper in Philadelphia County for each of the following reasons: (1) each Defendant regularly conducts business in Philadelphia County; (2) ACME Markets and CVS Pharmacy, as alleged *supra*, has a registered office and/or retail stores in Philadelphia County; (3) the cause of action arose in Philadelphia County; and/or, (4) Philadelphia County is a county where a transaction or occurrence took place out of which the cause of action arose.

26. The damages Plaintiff seeks, exclusive of interests and costs, exceed the jurisdictional amount requiring arbitration referral. Plaintiff seeks more than \$50,000 in damages.

FACTUAL BACKGROUND

27. At all times material hereto, L'Oréal Defendants developed, tested, assembled, marketed, manufactured, and sold various brands of chemical hair relaxer products that were specifically marketed to black women, including but not limited to the following brands that Plaintiff used to chemically straighten her hair:

- a. Dark & Lovely;
- b. Precise;
- c. Bantu; and,
- d. Optimum Care.

28. At all times material hereto, Strength of Nature Defendants developed, tested, assembled, marketed, manufactured, and sold various brands of chemical hair relaxer products that were specifically marketed to black women, including but not limited to the following brands that Plaintiff used to chemically straighten her hair:

- a. Motions;
- b. Dr. Miracle; and,
- c. Ultra Sheen.

29. At all times material hereto, Defendant Avlon Industries, Inc. developed, tested, assembled, marketed, manufactured, and sold various brands of chemical hair relaxer products that were specifically marketed to black women, including but not limited to the Affirm brand that Plaintiff used to chemically straighten her hair.

30. Plaintiff developed endometrial cancer as a result of frequent use of chemical hair relaxers manufactured by the Defendants.

CHEMICAL HAIR RELAXERS

31. Black and brown girls are taught at a young age that to be accepted in society, they must tame and control their natural hair.

32. This has led black and brown women and girls to temporarily or permanently alter their curly hair strands to make them straight to adhere to western beauty standards.

33. Traditionally, black women straightened their hair using a heated comb, commonly referred to as the "hot comb" invented by Francois Marcel Gateau. The hot comb, combined with temporary hair straightening and growth products created by Madame C.J. Walker, became popular in the early 1900s. Madame C.J. Walker became the country's first black female millionaire. This financial success showed the world that black haircare, particularly hair straightening products, is a very lucrative business.

34. In 1909, Garrett A. Morgan invented a hair straightening cream after mixing chemicals to correct friction in the sewing machine when sewing wool. The G.A. Morgan Refining Cream, which straightened wool, was later used to straighten hair.

35. In the 1960s, the first-generation hair relaxer was created to chemically straighten curly hair permanently by breaking and restructuring the disulfide bonds. The active ingredient, sodium hydroxide, a lye, irritated the scalp, diminished hair strength, and was difficult to rinse.

Additionally, the lye caused the relaxer to have a short shelf life because of the separation of the

oil and water in the relaxer cream.

36. In the 1970s, to remedy the disadvantages of the lye relaxer, hair relaxer

manufacturers began marketing no-lye relaxers using calcium hydroxide or guanidine hydroxide

as the active ingredients instead of sodium hydroxide.

37. Home hair relaxer kits were marketed and sold to women who wanted to apply the

chemical hair relaxer at home instead of having it professionally applied at a hair salon.

38. The home hair relaxer kits were a cheaper alternative to professional application at

a hair salon.

39. The home hair relaxer kit typically contains plastic gloves and a wooden spatula

for application because the chemicals are too harmful to touch with bare hands. The home hair

relaxer kits also include the relaxer cream, a liquid activator mixed with the relaxer cream before

application, neutralizing shampoo, and a restorative moisturizing balm.

40. For first-time application, the relaxer cream is placed on the hair from the root to

the end. After letting it sit on the hair for ten to twenty minutes, the relaxer is rinsed out with warm

water and then shampooed with a neutralizing shampoo to deactivate the alkalizing chemical

process, followed by applying conditioner to raise the pH level and soften the hair. Lastly, a

moisturizing treatment is used to restore hydration.

41. Defendants began marketing the new and improved no-lye-based relaxers using

two main marketing strategies: 1) marketing directly to black women and 2) portraying the no-lye

relaxer as safe.

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- 42. In the 1970s and 1980s, hair relaxer manufacturers used black celebrities such as Debbie Allen and Natalie Cole in their commercial ads to market the no-lye relaxer as a safe way to make curly and coarse hair more manageable.
- 43. In Dark & Lovely's 1980 hair relaxer commercial, while applying a hair relaxer, dancer and actress Debbie Allen stated, "For me, there is more to Dark & Lovely than just that it doesn't contain lye. Dark & Lovely is such a pleasure. It makes me feel like dancing." While dancing, she further stated, "It relaxes my hair just as well as those lye-based relaxers with a lot less burning and irritation, and there is no offensive odor...and it leaves it so soft that I can do anything with it."



- 44. For decades, Defendants continued to market chemical hair relaxer products to black women, but in the 1990s, the industry began to target young black girls with the first hair relaxer for girls, "Just for Me" by Soft & Beautiful.
- 45. In 1993, the infamous Just for Me commercial premiered featuring LaTavia Robinson, who later joined the famous music group Destiny's Child. Young girls sang and danced to the song with the lyrics: "Just for Me—the no-lye conditioner relaxing cream," again marketing the relaxer as safe because it did not contain lye.



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- 46. Other manufacturers followed suit, creating other chemical hair relaxers for young girls, including the PCJ hair relaxer, also introduced in the early 1990s.
- 47. Young black girls became enamored with the girls depicted on the hair relaxer boxes, believing they could achieve the same look if they used the hair relaxer.



- 48. It was recently discovered from a "Where Are They Now" interview that several women depicted on the hair relaxer boxes did not have chemically straightened hair and never used the chemical relaxer products.
- 49. The hair relaxer manufacturing companies spent billions of dollars targeting black women and girls:









50. Although the hair relaxer manufacturing companies marketed the no-lye relaxers as safe because they did not contain sodium hydroxide, the Defendant companies failed to warn consumers about the harmful chemicals in the hair relaxers, including endocrine-disrupting chemicals ("EDCs").

ENDOCRINE DISRUPTING CHEMICALS

51. Endocrine-Disrupting Chemicals disrupt the endocrine system, a network of organs and glands that produce, store, and secrete hormones. The glands, controlled by stimulation from the nervous system and chemical receptors in the blood and hormones, help maintain the body's homeostasis by regulating the functions of organs.

52. These glands help maintain the body's homeostasis by regulating the functions of the organs in the body, including but not limited to cellular metabolism, reproduction, sexual

development, sugar and mineral hemostasis, heart rate, and digestion.

53. EDCs can disrupt different hormones by mimicking or interfering with a natural

hormone, which can trick the cellular hormone receptor into thinking that the EDC is the hormone

the cellular hormone receptor responds to.

54. This can cause the creation of excess hormones or deficient hormones and can cause

adverse effects, including causing abnormalities in sex organs, early puberty, endometriosis, and

hormonally responsive cancers, among other hormonally related diseases.

55. A group of EDCs called xenoestrogens mimic estrogen by pretending to be

biologically created estrogen. Over time, these estrogen mimickers become difficult to detoxify in

the liver.

56. Chemical hair relaxers contain various types of endocrine disrupting chemicals,

including phthalates and parabens.

Phthalates

57. Phthalates were developed in the 1920s to make plastics more durable and

malleable, but today are used in cosmetics to create color and make fragrances last longer.

58. Phthalates are used in hair relaxers to make the hair more flexible after applying

the product.

59. Phthalates interfere with estrogen receptors and contribute to reproductive

problems such as early puberty in girls, menopausal symptoms, infertility, metabolic syndrome

and thyroid conditions, cognitive disorders, and cancer.

60. Di-2-ethylheylphtyalate ("DEHP") is a phthalate used in plastics to make them more flexible. Testing of chemical hair relaxers found the presence of DEHP.

61. In the Report of Carcinogens, Fifteenth Edition, the U.S. Department of Health and Human Services determined that there is "clear evidence" of carcinogenicity of DEHP in both male and female rats and that it is "reasonably anticipated to be a human carcinogen."

62. Similarly, the U.S. Environmental Protection Agency classified DEHP as a "B-2; probable human carcinogen" in its Chemical Assessment Summary.

Parabens

63. Parabens are a class of chemicals used as preservatives in cosmetic products to prevent the growth of harmful bacteria and mold and therefore preserve the product's shelf life. There are common parabens, including methylparaben, propylparaben, butylparaben, and ethylparaben.

- 64. Parabens are EDCs that also bind to estrogen receptors and mimic estrogen, causing estrogen dominance and health conditions such as reproductive issues and hormonal cancers.
- 65. A recent study detected three different parabens in hair relaxer kits: methylparaben, ethylparaben, and butylparaben. Testing of hair relaxer kits revealed high concentrations of this parabens.
- 66. An August 2019 study examined tissue samples from tumors of women diagnosed with endometrial cancer. It concluded that paraben molecules were more frequently detected in endometrial carcinoma tissue samples compared to normal endometrium.
- 67. Studies have shown that black women have elevated levels of phthalates in their urine compared to white women. Additionally, a May 2021 study showed higher levels of

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parabens and phthalates detected in the urine of women diagnosed with endometrial cancer than

women without cancer.

68. In a 2018 study, thirty-five different EDCs were present in three hair relaxer kits,

including phthalates, parabens, bisphenol A ("BPA"), cyclosilicates, triclosan, and

diethanolamine. Of the chemicals found to be present, 84% were not listed as ingredients on the

hair relaxer labels. Each of these individual EDCs is well documented to increase estrogen and

cause hormone-sensitive cancers.

69. The synergistic effects of the combination of the known EDCs in the hair relaxers

and the unknown chemicals hidden under the ingredient title "fragrances" further increase the risk

of developing hormonally driven cancers.

70. Moreover, because there is higher percutaneous absorption of chemicals in the

scalp compared with other areas of the skin such as on the forearm, palm, and abdomen, there is

an even greater risk of developing cancer from carcinogens placed on the scalp/hair.

PLAINTIFF'S HAIR RELAXER USE

71. Plaintiff, Merle Carter, M.D., consistently and frequently used Hair Relaxers,

starting in 1976.

72. For decades, Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise,

Bantu, Dr. Miracle, and Ultra Sheen, which are manufactured and advertised by the named

Manufacturer Defendants.

73. Plaintiff used different variations of Avlon's Affirm hair relaxers, including but not

limited to Affirm Crème Relaxer and Affirm Sensitive Scalp Relaxer.

74. Plaintiff used different variations of L'Oréal Defendants' Dark & Lovely hair

relaxer, including but not limited to Dark & Lovely Regular No-Lye Hair Relaxer.

75. Plaintiff used different variations of L'Oréal Defendants' Optimum hair relaxer, including but not limited to Optimum Salon Haircare Defy Breakage No-Lye Relaxer.

76. Plaintiff used different variations of L'Oréal Defendants' Bantu hair relaxer, including but not limited to Bantu No Base Relaxer.

77. Plaintiff used different variations of L'Oréal Defendants' Precise hair relaxer, including but not limited to Ultra Precise No-Lye Conditioning Relaxer.

78. Plaintiff used different variations of Strength of Nature Defendants' Dr. Miracle hair relaxer, including but not limited to Dr. Miracle's No Lye Relaxer Kit and Dr. Miracle's New Growth No Lye Relaxer Kit.

79. Plaintiff used different variations of Strength of Nature Defendants' Motions hair relaxer, including but not limited to Motions No Lye Relaxer, Motions Classic Formula Smooth & Silken Hair Relaxer, and Motions Silkening Shine No Lye Relaxer Kit.

80. Plaintiff used different variations of Strength of Nature Defendants' Ultra Sheen hair relaxer, including but not limited to Ultra Sheen No Lye Relaxer.

81. She reapplied the relaxer to newly grown hair approximately every four to eight weeks at a hair salon or at home using home hair relaxer kits.

82. Plaintiff purchased multiple hair relaxer home kits from ACME Markets at 7010 Germantown Avenue, Philadelphia, Pa 19119 and 7700 Crittendon Street, Philadelphia, Pa, 19118, starting in approximately 2004, including, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen.

Plaintiff purchased multiple hair relaxer home kits from CVS Pharmacies at 6701 83. Ridge Avenue, Philadelphia, Pa 19128 and 7605 Lincoln Drive, Philadelphia, Pa 19119 starting in approximately 2004, including, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

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Miracle, and Ultra Sheen.

84. Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra

Sheen hair relaxers purchased and used by the Plaintiff to apply to her hair contained endocrine

disrupting chemicals, including phthalates, parabens, and other carcinogenic chemicals.

85. Plaintiff has reason to believe that L'Oréal Defendants developed, tested,

assembled, marketed, manufactured, and sold other brands of chemical hair relaxer products

known to L'Oreal Defendants, but unknown to Plaintiff, that contained endocrine disrupting

chemicals.

86. Plaintiff has reason to believe that Strength of Nature Defendants developed, tested,

assembled, marketed, manufactured, and sold other brands of chemical hair relaxer products

known to Strength of Nature Defendants, but unknown to Plaintiff, that contained endocrine

disrupting chemicals.

87. Plaintiff has reason to believe that Defendant Avlon developed, tested, assembled,

marketed, manufactured, and sold other brands of chemical hair relaxer products known to

Defendant Avlon, but unknown to Plaintiff, that contained endocrine disrupting chemicals.

88. The Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and

Ultra Sheen hair relaxers purchased and used by the Plaintiff increased the risk of harm and/or was

a substantial contributing factor to her development of endometrial cancer.

HAIR RELAXERS LINKED TO UTERINE AND ENDOMETRIAL CANCERS

89. The uterus comprises two main parts: the endometrium and the myometrium.

Cancers in the uterus muscle layer are referred to as uterine sarcoma.

90. Endometrial cancer is a carcinoma that begins in the endometrium lining of the

uterus.

91. Endometrial cancer is one of the three most common cancers in females and is the

most common form of uterine cancer.

92. There are two types of endometrial cancers. Type 1 endometrial cancer tumors are

classified as endometroid adenocarcinoma and are linked to excess estrogen in the body.

93. Type 2 endometrial cancer tumors include uterine serous, clear cell, and squamous

cell carcinomas.

94. Type 1 endometrial cancer is far more common than Type 2, and accounts for

approximately 90% of diagnosed endometrial cancer.

95. Type 1 endometrial cancer incidence increased significantly between 1999 and

2006 compared to Type 2 endometrial cancers, which remained relatively stable during those

years.

96. Some endometrial cancers begin with a pre-cancerous condition called endometrial

hyperplasia, which practitioners consider an early stage of endometrial cancer.

97. One of the main risk factors for endometrial and other uterine cancers include

changes in the balance of female hormones in the body. Accordingly, exposure to EDCs is a risk

factor for developing hormone-sensitive cancers such as endometrial cancer.

98. Black women are twice as likely to be diagnosed with uterine cancer than white

women and have poorer prognoses when diagnosed.

99. For decades, research has shown that black women are far more likely to develop

reproductive cancers and other reproductive diseases.

100. Additionally, black women are two to three times more likely to develop uterine

leiomyomata, also known as fibroid tumors, than white women.

101. Endometriosis is an estrogen-dependent reproductive disease that causes growth of

the endometrial glands and stroma outside of the uterus, causing chronic inflammation.

102. Endometriosis is a risk factor for endometrial cancer, and as with other reproductive

diseases, it is far more prevalent in black women.

103. In addition to the research demonstrating the significant disparity between black

and white women in the development of reproductive disease, research also establishes that black

girls go through puberty and start menstruating earlier than girls of other races.

104. Scientists from the University of California, San Francisco, and Berkeley

conducted a continuing study of over 1,200 girls tracked between 2005 and 2011. They concluded

that by age seven, 23% of black girls started to develop breasts, compared with just 10% of white

girls.

105. Researchers have been baffled by the inability to identify why black girls are

menstruating so early and why black women are developing reproductive issues at alarming rates.

106. According to NBC News, approximately 95% of black women reported using

chemical hair straightening products, such as hair relaxers. Many of these women also said they

began using the products in early childhood, sometimes as young as five or six years old, and

continued frequent use through adulthood.

107. Although there is so much diversity within the black female community, one

commonality between generations of black women is using permanent chemical hair relaxers to

straighten their hair.

108. In October 2022, the results of a groundbreaking study were published in the

Journal of the National Cancer Institute by Dr. Che-Jung Chang and others regarding the link

between hair relaxer use and the development of uterine cancers.

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109. The study found that women who frequently used hair relaxers were more than

twice as likely to develop uterine cancers compared to women who did not use chemical hair

relaxers. Specifically, the study found that 1.64% of women who never used hair relaxer products

would develop uterine cancer before age 70. However, for women who ever used hair relaxers,

the risk of uterine cancer increased to 1.80% and drastically increased to 2.55% for women who

frequently used hair relaxers.¹

Among women who never used straighteners in the 12 months prior to baseline, 110.

approximately 1.64% were predicted to develop uterine cancer by age 70 years. The estimated

risk was 1.18% (95% CI for risk difference = 0.15% to 2.54%) higher for the women with ever

use, and 2.41% (95% CI for risk difference = 0.52% to 4.80%) higher for those with frequent use

compared with women who never used hair relaxers.

111. According to the researchers, "These findings are consistent with prior studies

supporting a role of straighteners in increased risk of other female, hormone-related cancers."

The researchers further stated that "Although no differences in the hazard ratios 112.

between racial and ethnic groups were observed, the adverse health effects associated with

straightener use could be more consequential for African American and/or Black women because

of the higher prevalence and frequency of hair product use, younger age of initiating use, and

harsher chemical formulations."²

PLAINTIFF'S CANCER DIAGNOSIS

113. In November 2015, at the age of forty-nine years old, Dr. Carter underwent

endometrial sampling which revealed a diagnosis of endometrial carcinoma.

¹ 4 Che-Jung Chang, et al., Use of Straighteners and Other Hair Products and Incident Uterine Cancer, Journal of the

National Cancer Institute, Oct. 17, 2022, https://pubmed.ncbi.nlm.nih.gov/36245087.

² Id.

114. Dr. Carter was advised to undergo a radical hysterectomy and bilateral

oophorectomy.

115. In December 2015, Dr. Carter underwent a total robotic laparoscopic hysterectomy

and bilateral oophorectomy, and surgical pathology confirmed a diagnosis of well-differentiated

endometrioid adenocarcinoma, FIGO 1-2.

116. Plaintiff's use of the hair relaxers manufactured and sold by the Defendants,

increased the risk of harm and/or was a substantial contributing factor to her development of

endometrial cancer.

117. Dr. Carter suffered significant pain as a result of her cancer diagnosis and

subsequent hysterectomy.

DISCOVERY RULE

118. Despite knowing that their chemical hair relaxer products contain large amounts of

EDCs that are more likely to enter the body when applied through the scalp, the Defendants failed

to warn of the potential for the use of their products to cause cancer and reproductive issues.

119. Plaintiff reserves the right to plead and invoke the discovery rule. Plaintiff's

endometrial cancer is a latent injury. Accordingly, under such circumstances, Plaintiff could not

have reasonably been expected to know the cause of her endometrial cancer. Plaintiff lacked the

salient facts behind the cause of her endometrial cancer, and Plaintiff could not have been aware

of the salient facts through reasonable diligence until less than two years before the filings of

Plaintiff's action.

120. Further, Plaintiff did not and could not have known that her injuries were caused

by Defendants' conduct in the exercise of reasonable diligence.

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121. The carelessness and recklessness in the acts and omissions of the Defendants, as

outlined and averred throughout the entirety of this Complaint, was a factual cause of and/or placed

Plaintiff at an increased risk of harm for and/or was a substantial factor in causing and did in fact

directly and proximately cause the severe, permanent and grievous personal injuries and damages

to Plaintiff.

COUNT I

STRICT LIABILITY - DESIGN DEFFECT

(Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, Defendant Avlon, ACME Defendants and CVS Defendants)

122. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth

herein.

123. At all relevant times, Defendants were engaged in the business of manufacturing,

formulating, creating, designing, testing, labeling, packaging, supplying, marketing, promoting,

selling, and advertising relaxers like Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu,

Dr. Miracle, and Ultra Sheen.

124. Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen frequently and consistently.

125. Defendants marketed and advertised Affirm, Dark & Lovely, Motions, Optimum,

Precise, Bantu, Dr. Miracle, and Ultra Sheen as a safe product for use by consumers, specifically

to black women and women of color, including Plaintiff, despite knowing that they contained

EDCs and other harmful chemicals.

126. At all relevant times, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu,

Dr. Miracle, and Ultra Sheen reached their intended consumers, including Plaintiff, without

substantial change in the condition in which the Defendants designed, produced, manufactured,

sold, distributed, labeled, and marketed them.

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127. Manufacturer Defendants had a duty to create Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen in a way that was not unreasonably

dangerous for their normal, intended, or anticipated use.

128. Retailer Defendants had a duty to ensure that Affirm, Dark & Lovely, Motions,

Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen was not defective and safe for its intended

use before selling said products to consumers, such as Dr. Carter.

129. Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen relaxers were defective as they were formulated, designed, and

manufactured with carcinogens.

130. The Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen were defective because their carcinogenic properties made them

unreasonably dangerous in that they were dangerous to an extent beyond that which an ordinary

consumer, such as the Plaintiff, would contemplate.

131. Further, the magnitude of the danger associated with use of Affirm, Dark & Lovely,

Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen's Best relaxers outweighs the

utility of these products.

132. The dangers of the Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen were unknown to the ordinary consumer.

133. Plaintiff did not know of these dangers. If she would have known, these dangers

would have been unacceptable to her.

134. Defendants knew, or should have known, of the unreasonable risks of harm

associated with the use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle,

and Ultra Sheen, namely their unreasonably dangerous and carcinogenic properties and their

propensity to cause cancer.

135. At the time of Plaintiff's exposure, Affirm, Dark & Lovely, Motions, Optimum,

Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were being used in a normal, intended, or

anticipated manner, as a chemical hair relaxer product.

136. Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen relaxers without knowledge of their dangerous characteristics,

specifically the carcinogenic risks associated with use of the products.

137. The foreseeable risks associated with use of Affirm, Dark & Lovely, Motions,

Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers exceeded the alleged benefits

associated with their design and formulation.

138. Defects in Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu,

Dr. Miracle, and Ultra Sheen relaxer products increased the risk, and were a producing cause,

proximate cause, and substantial factor in the development of Plaintiff's cancer.

139. As a result of the Defendants' reckless and conscious disregard for the health and

safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a

foreseeable, direct, and proximate result of Defendants' acts and omissions:

a. Economic losses, including medical care and lost earnings; and,

b. Noneconomic losses, including physical and mental pain and suffering,

emotional distress, inconvenience, loss of enjoyment of life, impairment of

quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against

Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of

suit, delay damages, compensatory damages, punitive damages, and such other relief as this

Honorable Court may deem appropriate.

COUNT II

STRICT LIABILITY - FAILURE TO WARN

(Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, Defendant Avlon, ACME

Defendants and CVS Defendants)

140. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth

herein.

141. Plaintiff brings this strict liability claim against Defendants for failure to warn about

the toxic carcinogenic chemicals in their hair relaxer products.

142. At all relevant times, Defendants engaged in the business of testing, developing,

designing, manufacturing, marketing, selling, distributing, and/or promoting Affirm, Dark &

Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, which are

defective and unreasonably dangerous to its consumers, including Plaintiff because they do not

contain adequate warnings or instructions regarding the dangerous carcinogenic chemicals

contained in the relaxer products.

143. The Defendants had a duty to warn of the risks associated with using their hair

relaxer products.

144. Defendants knew, or should have known, of the unreasonable risks of harm

associated with the use of their chemical hair relaxer products, namely their unreasonably

dangerous and carcinogenic properties and their propensity to cause cancer.

145. However, Defendants purposefully marketed their no-lye hair relaxer products as

safe because they did not contain "lye" or sodium hydroxide but failed to warn consumers about

the carcinogenic endocrine-disrupting chemicals in the hair relaxers.

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146. Defendants disseminated information that was inaccurate, false, and misleading

and that failed to communicate accurately or adequately the comparative severity, duration, and

extent of the risk of injuries associated with use and frequent use of Affirm, Dark & Lovely,

Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers; and continued to

promote the efficacy of the relaxers, even after they knew or should have known of the

unreasonable risks from use; and concealed, downplayed, or otherwise suppressed, through

aggressive marketing and promotion, any information or research about the risks and dangers of

use of the relaxers.

147. Defendants failed to exercise reasonable care to warn of the dangerous carcinogenic

risks associated with the use of its hair relaxers.

148. Plaintiff reasonably relied on the skill, superior knowledge, and judgment of the

Defendants.

149. Had Defendants properly disclosed the risks associated with use of their chemical

hair relaxers, Plaintiff could have chosen not to use the chemical hair relaxer and avoid the risk of

developing cancer from exposure to the hair relaxing chemicals.

150. As a result of the absence of warning or instruction by Defendants regarding the

significant health-and-safety risks associated with the use of their hair relaxers, Plaintiff was

unaware that the Defendants' hair relaxers were unreasonably dangerous and had carcinogenic

properties, since such information was not known to the general public.

151. Defendants' failure to warn regarding the dangers associated with use of Affirm,

Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers

increased the risk, and was a producing cause, proximate cause, and substantial factor in the

development of Plaintiff's cancer.

152. As a result of the Defendants' reckless and conscious disregard for the health and safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a

foreseeable, direct, and proximate result of Defendants' acts and omissions:

a. Economic losses, including medical care and lost earnings; and

b. Noneconomic losses, including physical and mental pain and suffering,

emotional distress, inconvenience, loss of enjoyment of life, impairment of

quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against

Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of

suit, delay damages, compensatory damages, punitive damages, and such other relief as this

Honorable Court may deem appropriate.

<u>COUNT III</u> NEGLIGENCE

(Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, and Avlon Defendant)

153. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth

herein.

154. At all relevant times, Defendants engaged in the business of testing, developing,

designing, manufacturing, marketing, selling, distributing, and/or promoting Affirm, Dark &

Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen.

155. Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen.

156. Defendants had a duty to exercise reasonable care in the research, design,

manufacturing, packaging, marketing, advertisement, supply, promotion, sale, and distribution of

Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers,

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including a duty to assure that the products would not cause users to suffer unreasonable dangerous

side effects, including developing cancer.

157. Defendants had a duty to provide true and accurate information and warnings

concerning the risks of using Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen relaxers.

158. Defendants failed to exercise reasonable care in that they knew, or should have

known, of the unreasonable risks of harm associated with the use of Affirm, Dark & Lovely,

Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers and the propensity for

the Hair Relaxers to cause cancer.

159. Defendants also knew, or in the exercise of reasonable care, should have known,

that consumers and users of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen relaxers were unaware of the carcinogenic risks associated with use of

the product.

160. Defendants' negligence includes, but is not limited to, the following acts and/or

omissions:

a. Failing to sufficiently test Affirm, Dark & Lovely, Motions, Optimum,

Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers to determine whether

they were safe for their intended use;

b. Failing to sufficiently test Affirm, Dark & Lovely, Motions, Optimum,

Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers to determine their

carcinogenic properties after learning that their formulations could be

carcinogenic;

- c. Marketing, advertising, and recommending the use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers without sufficient knowledge as to their dangerous propensities;
- d. Representing that Affirm, Dark & Lovely, Motions, Optimum, Precise,
 Bantu, Dr. Miracle, and Ultra Sheen relaxers were safe for their intended use when they were not;
- e. Failing to disclose the risk of serious harm associated with use Affirm, Dark
 & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers;
- f. Failing to provide adequate instructions, guidelines, and safety precautions to protect the health of those persons whom Defendants could reasonably foresee would use Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen;
- g. Failing to use reasonable and prudent care in the design, development, and manufacture of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, so as to avoid the risk of serious harm associated with use;
- h. Failing to sufficiently test the "inert" ingredients and/or adjuvants, including the chemicals classified as fragrances contained within Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, and the propensity of these ingredients to render the relaxers toxic or to increase the toxicity of the relaxers;

- Systematically suppressing or downplaying contrary evidence about the risks, incidence, and prevalence of the side effects of exposures to Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, such as side effects of exposure to endocrine-disrupting chemicals;
- j. Failing to disclose the risk of serious harm associated with use of endocrinedisrupting chemicals either alone or when included Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen; and,
- k. Continuing to manufacture and sell Affirm, Dark & Lovely, Motions,
 Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, with the
 knowledge that they were unreasonably safe and dangerous.
- Marketing, advertising, and recommending the use Affirm, Dark & Lovely,
 Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers
 without sufficient knowledge as to their dangerous propensities;
- m. Representing that Affirm, Dark & Lovely, Motions, Optimum, Precise,
 Bantu, Dr. Miracle, and Ultra Sheen relaxers were safe for their intended
 use when they were not;
- n. Failing to disclose the risk of serious harm associated with use of Affirm,
 Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra
 Sheen relaxers;
- o. Failing to provide adequate instructions, guidelines, and safety precautions to protect the health of those persons whom Defendants could reasonably

foresee would use Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers;

- p. Representing that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were safe, specifically because they did not contain "Lye", sodium hydroxide, for their intended use when they were not;
- q. Failing to disclose the risk of serious harm associated with use of Affirm,
 Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra
 Sheen relaxers;
- r. Continuing to manufacture and sell Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, with the knowledge that the relaxers were unreasonably safe and dangerous.
- 161. It was reasonably foreseeable that consumers, including Plaintiff, would suffer injury and possibly die as a result of Defendants' failure to exercise reasonable care in the manufacturing, marketing, promotion, labeling, distribution, and sale Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers.
- 162. Defendants' negligent decisions to market and distribute Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers increased the risk of harm, and was a producing cause, proximate cause, and substantial factor of the development of Plaintiff's cancer.
- 163. As a result of the Defendants' reckless and conscious disregard for the health and safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and omissions:

a. Economic losses, including medical care and lost earnings; and,

b. Noneconomic losses, including physical and mental pain and suffering,

emotional distress, inconvenience, loss of enjoyment of life, impairment of

quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against

Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of

suit, delay damages, compensatory damages, punitive damages, and such other relief as this

Honorable Court may deem appropriate.

<u>COUNT IV</u>

BREACH OF IMPLIED WARRANTIES

(Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, Defendant Avlon, ACME Defendants and CVS Defendants)

164. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth

herein.

165. At all relevant times, Defendants L'Oréal Defendants and Strength of Nature

Defendants were engaged in the business of manufacturing, formulating, creating, designing,

testing, labeling, packaging, supplying, marketing, promoting, selling, advertising, and otherwise

introducing Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra

Sheen relaxers that Plaintiff used into the stream of commerce.

166. At the time L'Oréal Defendants and Strength of Nature Defendants, marketed, sold,

and distributed its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and

Ultra Sheen relaxers for use by Plaintiff, Defendants knew of their intended use and implicitly

warranted that the products were of merchantable quality and safe and fit for the use for which

they were intended, specifically to chemically straighten hair.

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167. Before the time of Plaintiff's use of Affirm, Dark & Lovely, Motions, Optimum,

Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, L'Oréal Defendants, Strength of Nature

Defendants, and Defendant Avlon impliedly warranted to consumers, including Plaintiff, that its

relaxers were of merchantable quality and safe and fit for the use for which they were intended;

specifically, to chemically straighten hair.

168. L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon,

however, failed to disclose that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen relaxers have dangerous propensities when used as intended and that the

use of the relaxers carry an increased risk of developing severe injuries, including Plaintiff's

cancer.

169. Plaintiff reasonably relied upon the skill, superior knowledge, and judgment of

L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon, and upon their implied

warranties that its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and

Ultra Sheen relaxers were of merchantable quality and fit for their intended purpose or use.

170. Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen relaxers were expected to reach, and did in fact reach, consumers and/or

users, including Plaintiff, without substantial change in the condition in which they were

manufactured and sold by L'Oréal Defendants, Strength of Nature Defendants, and Defendant

Avlon.

71. At all relevant times to this litigation, Defendants were aware that consumers and

users of its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra

Sheen relaxers, including Plaintiff, would use the products as marketed; therefore, Plaintiff was a

foreseeable user of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and

Ultra Sheen relaxers.

172. Defendants intended that its Affirm, Dark & Lovely, Motions, Optimum, Precise,

Bantu, Dr. Miracle, and Ultra Sheen relaxers be used in the manner in which Plaintiff was exposed,

and Defendants implicitly warranted their product to be of merchantable quality, safe, and fit for

this use, despite the fact that the relaxers were not adequately tested and/or researched.

173. In reliance on Defendants' implied warranty, Plaintiff used Affirm, Dark & Lovely,

Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers as instructed and labeled

and in the foreseeable manner intended, recommended, promoted, and marketed by Defendants.

174. Plaintiff could not have reasonably discovered or known of the risks of serious

injury associated with Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle,

and Ultra Sheen relaxers.

175. Defendants breached their implied warranty to Plaintiff in that Affirm, Dark &

Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were not of

merchantable quality, safe, or fit for their intended use, an/or adequately tested.

176. Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen relaxers have dangerous propensities when used as intended and

anticipated and can cause serious injuries, including the cancer Plaintiff sustained.

177. The harm caused by Defendants' Affirm, Dark & Lovely, Motions, Optimum,

Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers far outweighed their benefits, rendering the

products more dangerous than an ordinary consumer or user would expect and more dangerous

than alternative products.

As a direct and proximate result of Defendants' wrongful acts and omissions

Plaintiff has suffered severe and permanent physical and emotional injuries.

179. As a result of the Defendants' reckless and conscious disregard for the health and

safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a

foreseeable, direct, and proximate result of Defendants' acts and omissions:

Economic losses, including medical care and lost earnings; and a.

Noneconomic losses, including physical and mental pain and suffering, b.

emotional distress, inconvenience, loss of enjoyment of life, impairment of

quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against

Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of

suit, delay damages, compensatory damages, punitive damages, and such other relief as this

Honorable Court may deem appropriate.

Respectfully submitted,

KLINE & SPECTER, P.C.

SHANIN SPECTER, ESQUIRE

TOBI L. MILLROOD, ESQUIRE

BRADEN R. LEPISTO, ESQUIRE

SHERRELL L. DANDY, ESQUIRE

Attorneys for Plaintiffs

Dated: May 22, 2024

VERIFICATION

I, Dr. Merle Carter, hereby verify that I am the Plaintiff in the foregoing action; that the

attached Complaint is based upon information which I have furnished to my counsel and

information which has been gathered by my counsel in the preparation of the lawsuit. The

language of the Complaint is that of counsel and not of affiant. I have read the Complaint and to

the extent that the allegations therein are based upon information I have given counsel, they are

true and correct to the best of my knowledge, information, and belief. To the extent that the

contents of the Complaint are that of counsel, I have relied upon counsel in making this

Verification. I understand that false statements made herein are made subject to the penalties

of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date: <u>5/22/2024</u>

Dr. Merle Carter, Plaintiff



EXHIBIT B

MERLE CARTER, M.D. 6608 LINCOLN DRIVE PHILADELPHIA, PA 19199 IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY, PENNSYLVANIA

PLAINTIFF

V.

L'ORÉAL USA, INC., et al.,

Case ID: 240502672

DEFENDANTS.

AFFIDAVIT OF CVS PHARMACY, INC.

Thomas S. Moffatt, upon their oath to tell the truth states as follows:

- 1. I am over the age of twenty-one years of age and competent to testify. I have personal knowledge of all facts in this affidavit.
- 2. I am the current Vice President, Secretary and Senior Legal Counsel Corporate Services, for CVS Pharmacy, Inc. In my role, I am familiar with and have personal knowledge of the corporate structure of CVS Pharmacy, Inc., its parent, subsidiary and affiliate entities, and its retail store locations.
- 3. CVS Pharmacy, Inc. is a Rhode Island corporation, with a principal place of business located at One CVS Drive, Woonsocket, RI 02895.
- 4. CVS Pharmacy, Inc.'s Pennsylvania registered agent for service of process is CT Corporation System, 600 North Second Street, Suite 401, Harrisburg, PA 17101.
- 5. CVS Pharmacy, Inc., is the operating entity that ultimately controls and is responsible for the sale of products by CVS retail store locations in Pennsylvania. CVS Pharmacy 6701 Ridge Avenue and CVS Pharmacy 7065 Lincoln Drive are retail store locations in the City of Philadelphia and are not legal entities.
- 6. I understand that Plaintiff, Merle Carter, M.D., filed a Complaint in this Court against CVS Pharmacy, Inc., CVS Pharmacy 6701 Ridge Avenue, and CVS Pharmacy 7065 Lincoln Drive on May 22, 2024.
- 7. CVS Pharmacy, Inc. received service of the Complaint via certified mail on May 30, 2024.

FURTHER AFFIANT SAYETH NOT.

I affirm under the penalties for perjury that the statements made in this affidavit are true and correct.

6/13/2024

Date

Name



EXHIBIT C

COURT Court of Companie Pleas Pennsylvania

Philadelphia Caunty - Civil

CASE NUMBER 2405026

AFFIDAVIT

State of Pennsylvania County of Philadelphia

Merle Carter

-VS-L'Oreal USA, Inc., et al

> B&R Control # CS208232.04 Reference Number

James Davis, being duly sworn according to law, deposes and says that he/she is the process server/sheriff herein named, and that the facts set forth below are true and correct to the best of their knowledge, information and belief.

On 5/23/2024 we received the Complaint and that service was effected upon CVS Pharmacy at 7065 LINCOLN DRIVE, PHILADELPHIA, PA 19119 on 5/24/2024 at 5:08 PM, in the manner described below:

By service upon: An individual, (STORE MANAGER) as agent or person in charge of office or usual place of business, who refused to provide their name.

Description:

Other:

Gender: MALE Race/Skin: BROWN

Age: Weight: Height: 5ft4in - 5ft8in Hair: BLACK

Service Notes:

Process Server/Sheriff

ATTEMPTS:

Client

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Phone (215) 772-1000

Filed Date:

05/22/2024

BR Serve By: 05/28/2024

Sherrell L. Dandy, Esquire Kline & Specter, P.C. 1525 Locust Street 19th Floor Philadelphia, PA 19102



ORIGINAL



EXHIBIT D

CASE NUMBER 2405@26 **AFFIDAVIT**

State of Pennsylvania County of Philadelphia

Merle Carter

-VS-L'Oreal USA, Inc, et al

> **B&R Control #** CS208232.03 Reference Number

Nipsey Mitchell, being duly sworn according to law, deposes and says that he/she is the process server/sheriff herein named, and that the facts set forth below are true and correct to the best of their knowledge, information and belief.

On 5/23/2024 we received the **Complaint** for service upon:

CVS Pharmacy at 6701 Ridge Avenue, Philadelphia, PA 19128.

Service was NOT SERVED on 05/23/2024 at 4:30 PM, for the reason described below:

REFUSED SERVICE. SPOKE TO 3 MANAGERS AND THEY ALL SAID TO SEND TO CORPORATE.

Process Server/Sheriff

I verify that the statements made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

ATTEMPTS:

Client Phone (215) 772-1000

Filed Date:

05/22/2024 BR Serve By: 05/28/2024

Sherrell L. Dandy, Esquire Kline & Specter, P.C. 1525 Locust Street 19th Floor Philadelphia, PA 19102



EXHIBIT A-9

ICE MILLER LLP

Jacqueline M. Lesser, Esquire Attorney ID No: 204622 1735 Market Street, Suite 3900 Philadelphia, PA 19103

Telephone: (215) 982-5165

Email: Jacqueline.Lesser@icemiller.com

Attorney for Defendant CVS Pharmacy, Inc. (erroneously sued as "CVS Pharmacy 6701 Ridge Avenue" and "CVS Pharmacy 7065 Lincoln Drive)



MERLE CARTER, M.D. 6608 LINCOLN DRIVE PHILADELPHIA, PA 19199

PLAINTIFF

V.

L'ORÉAL USA, INC., et al.,

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY, PENNSYLVANIA

Case ID: 240502672

DEFENDANTS.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT CVS PHARMACY, INC.'S (ERRONEOUSLY SUED AS "CVS PHARMACY 6701 RIDGE AVENUE" AND "CVS PHARMACY 7065 LINCOLN DRIVE") PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

Defendant CVS Pharmacy, Inc. ("CVS") (erroneously also sued CVS Pharmacy 6701 Ridge Avenue" and "CVS Pharmacy 7065 Lincoln Drive").⁴, by and through its undersigned

⁴ CVS Pharmacy, Inc. is the operating entity that ultimately controls and is responsible for the sale of products by CVS retail store locations in Pennsylvania. CVS Pharmacy 6701 Ridge Avenue and CVS Pharmacy 7065 Lincoln Drive located in Philadelphia are not proper defendants as they are retail store locations and are not legal entities. Notwithstanding these Preliminary Objections by CVS Pharmacy, Inc., CVS Pharmacy 6701 Ridge Avenue and CVS Pharmacy 7065 Lincoln Drive do not waive, and expressly reserve, the right to seek dismissal as improper parties at a later date.

counsel, hereby files this Memorandum of Law in Support of its Preliminary Objections to Plaintiff

Merle Carter, M.D.'s Complaint, and in support thereof, states the following:

MATTER BEFORE THE COURT I.

Before the Court are Preliminary Objections on behalf of CVS to Plaintiff's Complaint

pursuant to Pa.R.Civ.P. 1028(a)(1), (2), (3) and (a)(4). Plaintiff has improperly attempted to name

and serve CVS retail store locations. It is submitted that service on these individual store locations

does not constitute proper service upon CVS. Further, Plaintiff's Complaint fails to conform with

Pa.R.Civ.P. 1019(a) and Pa.R.Civ.P. 1020(a) and does not satisfy Rule 1028(a)(3) as she has not

pleaded any specific allegations of her purported use of certain unidentified hair relaxer products

for the time period 2004 to the present. In addition, the allegations against Defendants are lumped

together with no differentiation between Defendants and their alleged conduct. Plaintiff also fails

to satisfy Rule 1028(a)(4) because she has not and cannot plead that CVS, or any of the retailer

defendants, caused her injury. Furthermore, the Complaint fails to allege that CVS had the requisite

malicious state of mind to support a claim for punitive damages.

II. STATE OF QUESTIONS INVOLVED

1. Should this Court dismiss Counts I, II, and IV, as to CVS Pharmacy 6701 Ridge

Avenue and CVS Pharmacy 7065 Lincoln Drive, of Plaintiff's Complaint due to

improper service?

Suggest Answer: Yes

2. Should this Court dismiss Counts I, II and IV of Plaintiff's Complaint for failure to

conform to law or rule of court under Pa. R. Civ. P. 1028(a)(2) and failure to plead with

factual specificity under Pa. R. Civ. P. 1028(a)(3)?

Suggest Answer: Yes

3. Should this Court dismiss Counts I, II, and IV of Plaintiff's Complaint and Plaintiff's

request for punitive damages for failure to allege legally sufficient claims under

Pa.R.Civ.P. 1028(a)(4)?

Suggest Answer: Yes

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

In this products liability action, Plaintiff Merle Carter, M.D. alleges that she used chemical

hair relaxer brands "Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and

Ultra Sheen" (the "Products") purchased from CVS starting in approximately 2004. See Ex. A.,

Compl. at ¶ 83, 88. Plaintiff further alleges that the Products "contain large amounts" of cancer-

causing chemicals, and that this information was "concealed" from the public, the government,

and Plaintiff. Id. at ¶¶ 118, 146. Plaintiff also asserts that she purchased the Products "from

retailers", which purportedly includes CVS. Id. at ¶ 83. Plaintiff asserts claims against CVS for

strict liability – design defect, strict liability – failure to warn, and breach of implied warranties.

See generally id.

III.

Plaintiff's Complaint is wholly devoid of any assertions regarding her alleged purchases of

the hair relaxer products at issue from CVS; for example, she does not have any allegations

regarding where she purchased the Products (rather, lumping two CVS retail store locations

together), when she purchased the Products or how often she purchased the Products. Indeed, she

fails to include this requisite information for each of the eight product names she allegedly

purchased at CVS. In addition, Plaintiff's Complaint is wholly devoid of allegations regarding

how, when, or on what basis CVS allegedly should have—or even could have—known of any

allegedly cancer-causing chemicals Plaintiff claims were in the Products. See generally id.

While Plaintiff alleges she purchased several products from CVS—she does not specify when, or on how many occasions, and she also makes an overbroad and contradictory allegation that she bought all of the alleged hair relaxer products from two CVS retail store locations at unspecified periods of time across a twenty-year span (beginning in 2004). *See id.* ¶ 83.

IV. PRELIMINARY OBJECTIONS

a. PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT PURSUANT TO PA.R.CIV.P. 1028(A)(1) DUE TO IMPROPER SERVICE ON THE CVS RETAIL STORE DEFENDANTS.

Plaintiff purports to name CVS Pharmacy, Inc. in her Complaint filed on May 22, 2024, but also sued two CVS retail store locations, CVS Pharmacy 6701 Ridge Avenue and CVS Pharmacy 7065 Lincoln Drive (the "CVS retail store locations"). Under Pennsylvania Rule of Civil Procedure 1028(a)(1), a preliminary objection may be asserted due to improper service of a writ of summons of a complaint. The CVS retail store locations are not proper defendants as they are not legal entities and, thus, not proper defendants in this matter. Ex. B at \P 5. CVS Pharmacy, Inc. is the only legal CVS entity with a principal place of business in Rhode Island and thus, is the only proper defendant. Ex. B at \P 3. Accordingly, Plaintiff was required to serve CVS in accordance with Pennsylvania Rule of Civil Procedure 404. On or about May 30, 2024, Plaintiff filed an Affidavit of Service purporting to have served "CVS Pharmacy at 7065 Lincoln Drive" with the Complaint by Personal Service on May 24, 2024. Ex. C. 12. While Plaintiff's Affidavit of Service suggests that she served CVS Pharmacy 7065 Lincoln Drive on May 24, 2024, Pennsylvania Rule of Civil Procedure 404 provides that "original process shall be served outside the Commonwealth within ninety days of the issuance of the writ or the filing of the complaint or the reissuance or the reinstatement thereof." Pursuant to Rule 403 of the Pennsylvania Rules of Civil Procedure, "a copy of the process shall be mailed to the defendant by any form of mail requiring a receipt signed

by the defendant or his authorized agent." As the retail store locations are not the proper defendants nor are they authorized agents to accept service on behalf of CVS Pharmacy, Inc., it is submitted that service by mail at the store locations, upon an unidentified individual, is not proper service upon CVS. *See Salas v. Wal-Mart Stores East, Inc.*, 2015 WL 6737591*3 (Pa. Supr. Ct. August 7, 2015).⁵

b. PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY WITH PA.R.CIV.P. 1019(A) AND 1020(A) AND FOR LACK OF SPECIFICITY UNDER PA.R.CIV.P. 1028(a)(3) – COUNTS I, II, IV

Pennsylvania Rule of Civil Procedure 1028(a)(2) provides for the filing of preliminary objections where a complaint fails "[t]o conform to law or rule of court." Pa. R.Civ.P. 1028(a)(2). Rule of Civil Procedure 1019(a) in turn requires that the material facts on which a cause of action is based be stated in a concise and summary form. Pa. R.Civ.P. 1019(a). Indeed, as explained by the Superior Court, "a pleader must set forth concisely the facts upon which his cause of action is based. The complaint must not only apprise the defendant of the claim being asserted, but it must also summarize the essential facts to support the claim." *Bouchon v. Citizen Care, Inc.*, 176 A.3d 244, 258 (Pa. Super. 2017) (quoting *Donaldson v. Davidson Bros., Inc.*, 144 A.3d 93, 103 (Pa. Super. 2016)).

Rule 1020(a) also provides that "[t]he plaintiff may state in the complaint more than one cause of action cognizable in a civil action against the same defendant." However, "[e]ach cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief." Pa. R.Civ.P. 1020(a). With respect to Rule 1020(a), the Superior Court has

⁵ As evidence, on or about May 23, 2024, Plaintiff filed an Affidavit of Service properly noting that CVS Pharmacy at 6701 Ridge Avenue was not served as the managers properly directed service to be made upon CVS's corporate office. Ex. D. CVS Pharmacy, Inc. – the only proper defendant in this case – received service of the Complaint via certified mail on May 30, 2024. *See Ex. B* at ¶ 7.

observed that "[w]hile there is some authority that a single cause of action may be pled against two or more defendants who are alleged to be jointly and severally liable, that cannot be the case where the factual background underlying each defendant's liability is different." *Bouchon*, 176 A.3d at 258 (citing *General State Authority v. Lawrie and Green*, 356 A.2d 851, 854 (Pa. Commw. 1976)). A complaint also "must apprise the defendant of the nature and extent of the plaintiff's claim so that the defendant has notice of what the plaintiff intends to prove at trial and may prepare to meet such proof with his own evidence." *Id.* (quoting *Discover Bank v. Stucka*, 33 A.3d 82, 86–87 (Pa. Super. 2011)).

In addition, under Rule 1028(a)(3) of the Pennsylvania Rules of Civil Procedure, preliminary objections to a Complaint may be sustained where the pleading fails to plead allegations with sufficient specificity. *See* Pa.R.Civ.P. 1028(a)(3). Pennsylvania is a fact pleading state. A complaint must "disclose 'material facts' sufficient to enable the adverse party to prepare his case." *Laudau v. Western Pennsylvania Nat'l Bank*, 282 A.2d 335, 339 (Pa. 1971).

"Simple, vague and conclusory allegations" are not enough. *Id.* at 340. If Plaintiff "fails to connect any particular [defendant] to the cause" of her injuries, the claim must fail. *Cummins v. Firestone Tire and Rubber Co.*, 495 A.2d 963, 967 (Pa. Super. Ct. 1985). Joinder of multiple defendants does not permit Plaintiff to fail to plead the appropriate elements for "each defendant, separately and independently." *Id.* at 968. Without specific "identification, there can be no . . . legal causation, and hence there can be no liability." *Id.* (finding that absent connecting specific appellee and their product to the injury, appellant's claims for strict liability failed for lack of specificity). A complaint must contain essential material facts that support the claim against the defendant, enough to allow the defendant to prepare a defense. *See McShea v. City of Phila.*, 995 A.2d 334, 339 (Pa. 2010). If any particular allegation is too vague, the defendant may make a

preliminary objection in the nature of a motion to strike that portion of the complaint. *See Connor* v. *Allegheny Hosp.*, 461 A.2d 600, 603 n.3 (Pa. 1983).

Plaintiff's Complaint against CVS fails to satisfy this standard. Plaintiff asserts three claims against CVS – strict liability – design defect, Count I, strict liability – failure to warn, Count II, and breach of implied warranties, Count IV. *See generally, Compl.*

As to all of these counts, Plaintiff's specific allegations against CVS are contradictory, overbroad, and vague. Plaintiff alleges she purchased from CVS an unspecified number of "different variations" of hair relaxer product(s) under eight different brand names across a twenty-year span, beginning in 2004. *Compl.* at ¶ 83. The allegations are unclear whether she is alleging that her claims against CVS are limited to these eight products, on what occasions she purchased or used them, or whether they include unspecified products from one or more of the eight identified brand names purchased and used with unspecified frequency throughout the course of twenty years. Plaintiff's allegations are so vague, contradictory and confusing that CVS cannot determine the specific nature and scope of Plaintiff's claims against it. Accordingly, CVS cannot understand the specific basis on which Plaintiff seeks recovery under Counts I, II and IV.

Moreover, within all three of these Counts, Plaintiff's Complaint repeatedly speaks collectively to "Defendants" without differentiating any conduct or claims as between or among them. *See Compl.* ¶. Plaintiff purports to name twelve defendants in this case, ranging from product manufacturers, retail companies, and retail store locations. Despite significant differences between the defendants, each of Plaintiff's claims allege, with the exception of Count I, without factual support, that all "defendants" engaged in the same conduct, such as manufacturing the products.

For example, in Plaintiff's strict liability – failure to warn claim, Count II, Plaintiff alleges that "Defendants had a duty to warn of the risks associates with using their hair relaxer products" and that "Defendants knew, or should have known, of the unreasonable risks of harm associated with the use of their chemical hair relaxer products, namely their unreasonably dangerous and carcinogenic properties and their propensity to cause cancer." *Id.* at ¶¶ 143-144. However, Plaintiff does not, and cannot, plausibly assert that CVS manufactured the hair relaxer products. In fact, nowhere in the Complaint does Plaintiff allege any conduct attributable to CVS specifically.

The only allegation in Plaintiff's 179-paragraph Complaint that even mentions conduct attributable to the "Retailer Defendants," which includes CVS as well as other Defendants, is that "Retailer Defendants had a duty to ensure that [their Products] w[ere] not defective and safe for its intended use before selling said products to consumers, such as Dr. Carter." *Id.* at ¶ 128. This allegation lumps the retailer defendants together as one and does not specify which product(s) are attributed to each retailer by which they claim the retailer defendants have a legal duty.

Thus, CVS respectfully requests that the Preliminary Objections be sustained as to Counts I, II, and IV, or in the alternative, that the Court strike Paragraphs 83 and 128 of the Complaint for lack of specificity pursuant to Pa.R.Civ.P. 1028(a)(3).

c. PRELIMINARY OBJECTIONS IN THE NATURE OF A DEMURRER TO PLAINTIFF'S COMPLAINT BASED ON LEGAL INSUFFICIENCY UNDER PA.R.CIV.P. 1028(A)(4).

Under Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure, the court may sustain objections based on demurrer due to legal insufficiency of the pleading. *See* Pa.R.Civ.P. 1028(a)(4). When considering "preliminary objections in the nature of demurrer," all well-pleaded "material facts set forth in the challenged pleadings are admitted as true, as well as all inferences

reasonably deducible therefrom." *Haun v. Cmty. Health Sys., Inc.*, 14 A.3d 120, 123 (Pa. Super. Ct. 2011); *see also Giffin v. Chronister*, 616 A.2d 1070, 1072 (Pa. Commw. Ct. 1992). Yet, "conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion" need not be accepted as true. *Giffin v. Chronister*, 616 A.2d at 1072.

The Complaint fails to allege facts legally sufficient to impose liability on CVS and thus all claims against CVS should be dismissed. First, Plaintiff's claims fail to allege CVS's—or any other retailer defendants'—role in her injury. Second, Plaintiff fails to allege any facts remotely suggesting that CVS had the requisite state of mind for punitive damages to be awarded.

1. <u>All Of Plaintiff's Claims Against CVS (Count I, II, IV) Are Legally Insufficient Due To</u> A Failure To Establish Causation.

To succeed on a strict liability claim, the Plaintiff must prove first that "the product was defective" and second that the product's "defect was a *substantial factor in causing* the injury." *Spino v. John S. Tilley Ladder Co.*, 696 A.2d 1169, 1172 (Pa. 1997) (emphasis added); *see also Charlton v. Toyota Indus. Equip.*, 714 A.2d 1043, 1046 (Pa. Super. Ct. 1998). Relatedly, to prove breach of warranty under Pennsylvania law, the Plaintiff must show that the defendant's breach caused the plaintiff's injury. *See Altronics of Bethlehem, Inc. v. Repco, Inc.*, 957 F.2d 1102, 1105 (3d Cir. 1992) (to carry the burden on a breach of warranty claim, plaintiff must show an "absence of other reasonable secondary causes").

Plaintiff fails to allege CVS's role in her injury. Plaintiff's only allegation specific to the retailer defendants regarding strict liability is nothing more than a conclusory statement that "Retailer Defendants had a duty to ensure [hair relaxer products] w[ere] not defective and safe for its intended use before selling said products to consumers, such as Dr. Carter." *Compl.* at ¶ 128. Plaintiff only makes this argument regarding Count I, strict liability – design defect, and makes no allegations against retailer defendants in Count II, strict liability – failure to warn. *See id.* ¶¶ 140-

152. Though Plaintiff argues the retailer defendants, including CVS, had a duty to ensure the hair relaxer products were safe, no such duty exists in a strict liability claim. See Barton v. Lowe's Home Ctrs., Inc., 124 A.3d 349, 354 (Pa. Super. 2015) (explaining that in Tincher v. Omega Flex, Inc., 104 A.3d 328, 400-01 (Pa. 2014) the Pennsylvania Supreme Court declined to adopt the RESTATEMENT (THIRD) OF TORTS and instead reaffirmed the viability of 402A from the RESTATEMENT (SECOND)). Nonetheless, retailers like CVS have no duty to inspect products for latent defects and are not "liable to a customer for injuries caused by" such defects. See Kratz v. Am. Stores Co., 59 A.2d 138, 138 (Pa. 1948) (stating that there is no duty on the part of the defendant to test and inspect the contents of the product before sale because that would be "wholly impractical"). Furthermore, in her claim for breach of warranty, Plaintiff does not assert any allegations against the retailer defendants, including CVS. Compl. ¶¶ 153-163. Instead, all allegations are made against the manufacturing defendants or "Defendants" collectively.

Plaintiff also fails to adequately plead—and cannot adequately plead—causation against CVS. Plaintiff makes an overbroad and vague allegation that she bought unspecified products from eight different named brands at the CVS retail store locations beginning in 2004. *Id.* ¶ 83. Even if such allegations were sufficient (which they are not), the allegadly "groundbreaking" study on which Plaintiff relies is not sufficient for Plaintiff to allege that the hair relaxer products allegadly purchased from any given retailer defendant caused her cancer. Plaintiff alleges that the study upon which she relies shows that women who used hair relaxer products were more likely to develop uterine cancer. *Id.* ¶¶ 108-109. Plaintiff further alleges that the risk increases for those who "frequently used hair relaxers." *Id.* The Complaint alleges broadly that Plaintiff used hair relaxers "every four to eight weeks." *See id.* ¶ 81. Plaintiff does not allege when exactly she purchased any brands of hair relaxer products from CVS, other than a vague allegation that she began purchasing

products approximately in 2004, and so CVS is unable to determine if she purchased the products before or after her cancer diagnosis. *See id.* ¶ 83, 113. Plaintiff never explains how frequently she purchased and used any of the listed products from CVS. *See generally* Compl. Additionally, she never specifies how often she purchased or used the products she allegedly purchased from CVS. *See generally* Compl.; *see id.* ¶ 83. It is therefore impossible to ascertain from the allegations if Plaintiff's purported use of hair relaxer product(s) purchased from CVS even corresponds with the type and frequency of use allegedly discovered in the "groundbreaking" study. *See id.* ¶¶ 108-109. Thus, Plaintiff fails to establish that exposure to specific product(s) purchased at CVS was a substantial cause of the complained injury and causation is therefore not properly plead in the Complaint against CVS.

2. <u>Plaintiff's Request For Punitive Damages Is Not Sufficiently Plead As It Is Not Based On Legally Sufficient Allegations.</u>

Finally, Plaintiff's claim for punitive damages against CVS should likewise be dismissed. Punitive damages should be dismissed when the complaint alleges nothing more than mere "ordinary negligence." *McDaniel v. Merck, Sharp & Dohme*, 533 A.2d 436, 447-48 (1987) (affirming dismissal of punitive damages in response to preliminary objections because appellant failed to plead any facts in support of their overly conclusory statements of willful and wanton conduct). Punitive damages "may not be awarded for misconduct which constitutes ordinary negligence such as inadvertence, mistake and errors of judgment." *Id.* at 447.

Punitive damages are awarded only when conduct is "outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." *Id.* at 447 (citing RESTATEMENT (SECOND) OF TORTS, §908(2) (AM. L. INST. 2023). Punitive damages are "appropriate to punish and deter *only extreme* behavior, and in those *rare* instances in which they are justified, they are subject to strict judicial control." *Smith v. Reinhart Ford*, 68 Pa. D. & C.4th

432, 439 (Ct. Com. Pl. 2004) (emphasis added) (finding punitive damages appropriate because intentional fraud was plead which inherently provides proof for "outrageous conduct"). The Court must look at the defendant's state of mind and consider whether there is an "evil motive." *See Feld v. Merriam*, 485 A.2d 742, 747-48 (Pa. 1984) (discussing generally the requirements for punitive damages under Pennsylvania's adoption of the RESTATEMENT (SECOND) OF TORTS guidelines). If the defendant does not subjectively know of the risk, especially if the danger is not easily perceptible, actions or lack thereof could not be the result of an evil motive. *See Feld v. Merriam*, 485 A.2d 742, 748 (Pa. 1984); *Hutchison ex rel. Hutchison v. Luddy*, 896 A.2d 1260, 1266 (Pa. 2006) (applying *Feld v. Merriam*'s interpretation of Pennsylvania's adoption of the Restatement).

Here, Plaintiff fails to allege that CVS had "subjective appreciation of the risk," or that CVS was in any way malicious or evil in its action. See Hutchison ex rel. Hutchison v. Luddy, 896 A.2d at 1266. First, Plaintiff's Complaint is devoid of any allegation that CVS's conduct was willful, wanton, or reckless. See generally Compl. Second, Plaintiff's reliance on the "groundbreaking" study released eighteen years after she began purchasing hair relaxer products bars the possibility that CVS had the subjective appreciation of the risk required for punitive damages when Plaintiff was purchasing and using the product(s). Id. ¶ 109. CVS could not have had the evil motive required for punitive damages when, by Plaintiff's own admission, there was no way for CVS to have knowledge of the alleged link between the product(s) and cancer. Id. Plaintiff cannot meet the high standard for punitive damages without showing the Defendant's necessary intent and subjective appreciation. See Feld v. Merriam, 485 A.2d at 748 (finding a defendant's inadequate response to a not easily perceptible danger does not reach the level of intent

needed for punitive damages). Consequently, Plaintiff's request for punitive damages should be dismissed.

V. CONCLUSION

CVS respectfully requests that this Court grant its Preliminary Objections to Plaintiff's Complaint and enter the attached Order.

ICE MILLER LLP

By: /s/ Jacqueline M. Lesser

Jacqueline M. Lesser
Identification No.: 204622
1735 Market Street
Suite 3900
Philadelphia, PA 19103
215-982-5165
Jacqueline.lesser@icemiller.com

Attorney for Defendant, CVS Pharmacy, Inc. (erroneously sued as "CVS Pharmacy 6701 Ridge Avenue" and "CVS Pharmacy 7065 Lincoln Drive").

CERTIFICATE OF SERVICE

I, Jacqueline Lesser, do hereby certify that I have served a true and correct copy of Defendant CVS Pharmacy, Inc.'s ("CVS") (erroneously also sued as "CVS Pharmacy 6701 Ridge Avenue" and "CVS Pharmacy 7065 Lincoln Drive") Preliminary Objections to Plaintiff's Complaint, upon all counsel of record, via the court's electronic filing system on the following counsel of record:

Tobias Millrood
Braden Lepisto
Sherrell Dandy
KLINE & SPECTER, P.C.
1525 LOCUST STREET
19TH FLOOR
PHILADELPHIA PA 19102
(215)772-1000
sherrell.dandy@klinespecter.com

ICE MILLER LLP

/s/ Jacqueline Lesser

Dated: June 13, 2024

EXHIBIT A-10

MERLE CARTER, M.D. 6608 LINCOLN DRIVE PHILADELPHIA, PA 19199

PLAINTIFF

V.

L'ORÉAL USA, INC., et al.,

Filed and Attested by the IN THE COURT OF CO IN COURT OF PHILADELPHIA COUNTY 2024 04 15 pm PENNSYLVANIA

Case ID: 240502672

DEFENDANTS.

ORDER

	AND NC)w, tnis	day of	2024, upoi	n consideration of	the Preliminary
Objec	tions to Pla	aintiff's Compla	aint filed by D	efendant CVS Pha	rmacy, Inc. ("CVS	") (erroneously
sued a	as "CVS P	harmacy 6701	Ridge Avenue	e" and "CVS Phar	rmacy 7065 Linco	ln Drive"), and
any 1	esponse f	iled thereto, it	t is hereby	ORDERED that	the Preliminary	Objections are
SUST	`AINED, aı	nd Counts I (Str	ict Liability –	Design Defect) II ((Strict Liability – F	Failure to Warn)
and I	V (Breach	of Implied Warr	ranties) agains	st CVS are DISMI	SSED with prejud	ice.

В	THE COURT:	

EXHIBIT A-11

KLINE & SPECTER, P.C.

SHANIN SPECTER, ESQUIRE By: TOBI L. MILLROOD, ESQUIRE

(Attorney I.D. No.: 40928) Filed (Attorney I.D. No.: 77764) Office

BRADEN R. LEPISTO, ESQUIRE (Attorney I.D. No.: 313586) SHERRELL L. DANDY, ESQUIRE (Attorney I.D. No.: 309348)

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215-772-1359 (fax)

ATTORNEYS FOR PLAINTIFF

MERLE CARTER

Plaintiff,

V.

MAY TERM, 2024

L'ORÉAL USA, INC., et al.

Defendants.

NO. 02672

JURY TRIAL DEMANDED

COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

: SS

COUNTY OF PHILADELPHIA

SHAINA ROBBINS, being duly sworn according to law, deposes and says that on May 22, 2024, I mailed a true and correct copy of the Complaint in the above-captioned matter to Defendant, Avlon Industries, Inc. via Certified Mail, Return Receipt Requested and that same was received on May 28, 2024. A copy of the transmittal letter, return receipt and tracking information from usps.com is attached hereto as Exhibit A.

SWORN TO AND SUBSCRIBED

before me this 17 Th

day of

2024.

Commonwealth of Pennsylvania - Notary Seal ANGELA F. FATTIZZO, Notary Public Philadelphia County

My Commission Expires November 9, 2025 Commission Number 1048180

Commonwealth of Pennsylvania - Notary Seal ANGELA F. Fattl 2.10 Notary Public

Philadelphia Lounty My Commission Expires November 9, 2025 Commission Number 10481

Case ID: 240502672

EXHIBIT "A"

KLINE & SPECTER PC

ATTORNEYS AT LAW

1525LOCUST STREET

PHILADELPHIA, PENNSYLVANIA 19102

WWW.KLINESPECTER.COM

SHERRELL L. DANDY

SHERRELL.DANDY@KLINESPECTER.COM

215-792-5608 FAX: 215-402-2352

May 22, 2024

<u>VIA CERTIFIED MAIL/RRR:</u> 9590 9402 8234 3030 8731 31

Avlon Industries, Inc. 1999 North 15th Street Melrose Park, IL 60160

Re: Merle Carter v. L'Oreal USA, Inc., et al.

Dear Sir/Madam:

Enclosed please find the Complaint in the above-refered matter, in which you were named as a Defendant, which was filed in the Philadelphia Court of Common Pleas on May 22, 2024.

Very truly yours

Sherrell L. Dandy

SLD/cm encls

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EXHIBIT A-12

KLINE & SPECTER, P.C.

By: SHANIN SPECTER, ESQUIRE TOBI L. MILLROOD, ESQUIRE

(Attorney I.D. No.: 40928) Filed (Attorney I.D. No.: 77764) Office

BRADEN R. LEPISTO, ESQUIRE (Attorney I.D. No.: 313586)

SHERRELL L. DANDY, ESQUIRE (Attorney I.D. No.: 309348)

Shanin.Specter@klinespecter.com

Tobi.Millrood@klinespecter.com

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1525 Locust Street

Philadelphia, Pennsylvania 19102

215-772-1000

215-772-1359 (fax)

ATTORNEYS FOR PLAINTIFF

MERLE CARTER

Plaintiff,

V.

L'ORÉAL USA, INC., et al.

Defendants.

COURT OF COMMON PLEAS PHILADELPHIA COUNTY

MAY TERM, 2024

NO. 02672

JURY TRIAL DEMANDED

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

: SS

COUNTY OF PHILADELPHIA

.

SHAINA ROBBINS, being duly sworn according to law, deposes and says that on May 22, 2024, I mailed a true and correct copy of the Complaint in the above-captioned matter to Defendant, CVS Pharmacy, Inc. via Certified Mail, Return Receipt Requested and that same was received on May 25, 2024. A copy of the transmittal letter and tracking information from usps.com is attached hereto as Exhibit A.

SHAINA ROBBINS

SWORN TO AND SUBSCRIBED

before me this 17

day of

, 2024.

Commonwealth of Pennsylvania - Notary Seal ANGELA F. FATTIZZO, Notary Public Philadelphia County

My Commission Expires November 9, 2025 Commission Number 1048180

EXHIBIT "A"

KLINE & SPECTER PC

ATTORNEYS AT LAW
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SHERRELL L. DANDY

SHERRELL.DANDY@KLINESPECTER.COM

215-792-5608 FAX: 215-402-2352

May 22, 2024

<u>VIA CERTIFIED MAIL/RRR:</u> 9590 9402 8234 3030 8731 24

CVS Health Corporation 1 CVS Drive Woonsocket, RI 02895

Re: Merle Carter v. L'Oreal USA, Inc., et al.

Dear Sir/Madam:

Enclosed please find the Complaint in the above-refered matter, in which you were named as a Defendant, which was filed in the Philadelphia Court of Common Pleas on May 22, 2024.

Very truly yours

Sherrell L. Dandy

SLD/cm encls

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FAQs

EXHIBIT A-13

KLINE & SPECTER, P.C.

By: SHANIN SPECTER, ESQUIRE

TOBI L. MILLROOD, ESQUIRE

(Attorney I.D. No.: 40928) Filed (Attorney I.D. No.: 77764) Office

BRADEN R. LEPISTO, ESQUIRE (Attorney I.D. No.: 313586)

SHERRELL L. DANDY, ESQUIRE (Attorney I.D. No.: 309348)

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215-772-1359 (fax)

ATTORNEYS FOR PLAINTIFF

MERLE CARTER

Plaintiff,

V.

MAY TERM, 2024

L'ORÉAL USA, INC., et al.

Defendants.

NO. 02672

JURY TRIAL DEMANDED

COURT OF COMMON PLEAS PHILADELPHIA COUNTY

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

: SS

COUNTY OF PHILADELPHIA

SHAINA ROBBINS, being duly sworn according to law, deposes and says that on May 22, 2024, I mailed a true and correct copy of the Complaint in the above-captioned matter to Defendant, L'Oreal USA Products, Inc. via Certified Mail, Return Receipt Requested and that same was received on May 28, 2024. A copy of the transmittal letter and tracking information from usps.com is attached hereto as Exhibit A.

SHAINA ROBBINS

SWORN TO AND SUBSCRIBED

before this 1771

day of

, 2024.

Commonwealth of Pennsylvania - Notary Seal
ANGELA F. FATTIZZO, Notary Public
Philadelphia County

My Commission Expires November 9, 2025 Commission Number 1048180

EXHIBIT "A"

KLINE & SPECTER PC

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SHERRELL L. DANDY

SHERRELL.DANDY@KLINESPECTER.COM

215-792-5608

FAX: 215-402-2352

May 22, 2024

<u>VIA CERTIFIED MAIL/RRR:</u> 9590 9402 7390 2055 0920 44

L'Oreal USA Products, Inc. 10 Hudson Yards New York, NY 10001

Re: Merle Carter v. L'Oreal USA, Inc., et al.

Dear Sir/Madam:

Enclosed please find the Complaint in the above-refered matter, in which you were named as a Defendant, which was filed in the Philadelphia Court of Common Pleas on May 22, 2024.

Very truly yours

Sherrell L. Dandy

SLD/cm encls

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Case ID: 2405/02672

EXHIBIT A-14

KLINE & SPECTER, P.C.

SHANIN SPECTER, ESQUIRE By:

(Attorney I.D. No.: 40928) Filed

(Attorney I.D. No.: 77764) Office

TOBI L. MILLROOD, ESQUIRE BRADEN R. LEPISTO, ESQUIRE (Attorney I.D. No.: 313586)

SHERRELL L. DANDY, ESQUIRE (Attorney I.D. No.: 309348)

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215-772-1359 (fax)

ATTORNEYS FOR PLAINTIFF

MERLE CARTER

Plaintiff,

V.

MAY TERM, 2024

L'ORÉAL USA, INC., et al.

Defendants.

NO. 02672

JURY TRIAL DEMANDED

COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

: SS

COUNTY OF PHILADELPHIA

SHAINA ROBBINS, being duly sworn according to law, deposes and says that on May 22, 2024, I mailed a true and correct copy of the Complaint in the above-captioned matter to Defendant, Soft Sheen-Carson, LLC. via Certified Mail, Return Receipt Requested and that same was received on May 29, 2024. A copy of the transmittal letter, return receipt, and tracking information from usps.com is attached hereto as Exhibit A.

SHAINA ROBBINS

SWORN TO AND SUBSCRIBED

before me this

day of

. 2024.

Commonwealth of Pennsylvania - Notary Seal ANGELA F. FATTIZZO, Notary Public Philadelphia County

My Commission Expires November 9, 2025 Commission Number 1048180

Case ID: 240502672

EXHIBIT "A"

KLINE & SPECTER PC

ATTORNEYS AT LAW
1525LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102
WWW.KLINESPECTER.COM

SHERRELL L. DANDY

SHERRELL.DANDY@KLINESPECTER.COM

215-792-5608 FAX: 215-402-2352

May 22, 2024

<u>VIA CERTIFIED MAIL/RRR:</u> 9590 9402 7390 2055 0920 51

Soft Sheen-Carson, LLC 10 Hudson Yards New York, NY 10001

Re: Merle Carter v. L'Oreal USA, Inc., et al.

Dear Sir/Madam:

Enclosed please find the Complaint in the above-refered matter, in which you were named as a Defendant, which was filed in the Philadelphia Court of Common Pleas on May 22, 2024.

Very truly yours

Sherrell L. Dandy

SLD/cm encls

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FAQs

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Domestic Return Receipt

EXHIBIT A-15

KLINE & SPECTER, P.C.

By: SHANIN SPECTER, ESQUIRE (Attorney I.D. No.: 40928) Office (Attorney I.D. No.: 77764)

TOBI L. MILLROOD, ESQUIRE BRADEN R. LEPISTO, ESQUIRE (Attorney I.D. No.: 313586)

SHERRELL L. DANDY, ESQUIRE (Attorney I.D. No.: 309348)

Shanin.Specter@klinespecter.com Tobi.Millrood@klinespecter.com

Braden.Lepisto@klinespecter.com

Sherrell.Dandy@klinespecter.com

1525 Locust Street

Philadelphia, Pennsylvania 19102

215-772-1000

215-772-1359 (fax)

ATTORNEYS FOR PLAINTIFF

MERLE CARTER

Plaintiff,

V.

MAY TERM, 2024

L'ORÉAL USA, INC., et al.

Defendants.

NO. 02672

JURY TRIAL DEMANDED

COURT OF COMMON PLEAS PHILADELPHIA COUNTY

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

: SS

COUNTY OF PHILADELPHIA

SHAINA ROBBINS, being duly sworn according to law, deposes and says that on May 22, 2024, I mailed a true and correct copy of the Complaint in the above-captioned matter to Defendant, Strength of Nature, LLC. via Certified Mail, Return Receipt Requested and that same was received on May 29, 2024. A copy of the transmittal letter and return receipt is attached hereto as Exhibit A.

SHAINA ROBBINS

SWORN TO AND SUBSCRIBED before me this 17th day of

, 2024.

Commonwealth of Pennsylvania - Notary Seal ANGELA F. FATTIZZO, Notary Public Philadelphia County

Commission Expires November 9, 2025 Commission Number 1048180

Case ID: 240502672

EXHIBIT "A"

KLINE & SPECTER PC

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1525LOCUST STREET
PHILADELPHIA, PENNSYLVANIA 19102
WWW.KLINESPECTER.COM

SHERRELL L. DANDY

SHERRELL.DANDY@KLINESPECTER.COM

215-792-5608 FAX: 215-402-2352

May 22, 2024

<u>VIA CERTIFIED MAIL/RRR:</u> 9590 9402 3662 7335 1306 34

Strength of Nature, LLC 64 Ross Road Savannah, GA 31405

Re: Merle Carter v. L'Oreal USA, Inc., et al.

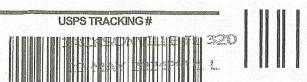
Dear Sir/Madam:

Enclosed please find the Complaint in the above-refered matter, in which you were named as a Defendant, which was filed in the Philadelphia Court of Common Pleas on May 22, 2024.

Very truly yours

Sherrell L. Dandy

SLD/cm encls



9590 9402 3662 7335 1306 34

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omplete items 1, 2, and 3. int your name and address on the reverse that we can return the card to you. Itach this card to the back of the mailpiece, or on the front if space permits. I. Article Addressed to: Strength of Nature LLC LH ROSS Road Savannah GA 31405	B. Received by (Printed Name) D. Is delivery address different from If YES, enter delivery address by	Agent Addresse C. Date of Deliver litem 1? Yes elow: No
9590 9402 3662 7335 1306 34 2. Article Number (Transfer from service label)	3, Service Type Adult Signature Adult Signature Restricted Delivery Certified Mail® Certified Mail Restricted Delivery Collect on Delivery Collect on Delivery Insured Mail	Restricted Delivery
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EXHIBIT A-16

KLINE & SPECTER, P.C.

(Attorney I.D. No.: 40928)_{Office} SHANIN SPECTER, ESQUIRE (Attorney I.D. No.: 77764) TOBI L. MILLROOD, ESQUIRE BRADEN R. LEPISTO, ESQUIRE (Attorney I.D. No.: 313586) SHERRELL L. DANDY, ESQUIRE (Attorney I.D. No.: 309348)

19

Shanin.Specter@klinespecter.com Tobi.Millrood@klinespecter.com Braden.Lepisto@klinespecter.com Sherrell.Dandy@klinespecter.com 1525 Locust Street Philadelphia, Pennsylvania 19102 215-772-1000 215-772-1359 (fax)

ATTORNEYS FOR PLAINTIFF

MERLE CARTER

Plaintiff,

V.

L'ORÉAL USA, INC., et al.

Defendants.

COURT OF COMMON PLEAS PHILADELPHIA COUNTY

MAY TERM, 2024

NO. 02672

JURY TRIAL DEMANDED

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

: SS

COUNTY OF PHILADELPHIA

CAROLYN METCALF, being duly sworn according to law, deposes and says that on May 22, 2024, I mailed a true and correct copy of the Complaint in the above-captioned matter to Defendant, Godrej Son Holdings, Inc. via Certified Mail, Return Receipt Requested and that same was received on May 29, 2024. A copy of the transmittal letter and return receipt are attached

hereto as Exhibit A.

METCAI

SWORN TO AND SUBSCRIBED before me this 19 day of

, 2024.

Commonwealth of Pennsylvania - Notary Seal ANGELA F. FATTIZZO, Notary Public Philadelphia County

Commission Expires November 9, 2025 Commission Number 1048180

Case ID: 240502672

EXHIBIT "A"

KLINE & SPECTER PC

ATTORNEYS AT LAW

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SHERRELL L. DANDY

SHERRELL.DANDY@KLINESPECTER.COM

215-792-5608 FAX: 215-402-2352

May 22, 2024

<u>VIA CERTIFIED MAIL/RRR:</u> 9590 9402 3662 7335 1306 03

Godrej Son Holdings, Inc. 64 Ross Road Savannah, GA 31405

Re: Merle Carter v. L'Oreal USA, Inc., et al.

Dear Sir/Madam:

Enclosed please find the Complaint in the above-refered matter, in which you were named as a Defendant, which was filed in the Philadelphia Court of Common Pleas on May 22, 2024.

Very truly yours

Sherrell L. Dandy

SLD/cm encls

ase 2:	SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
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	9590 9402 3662 7335 1306 03 2. Article Number (Transfer from service label) 022 2410 0000 1504 9832	3, Service Type	
	'S Form 3811, July 2015 PSN 7530-02-000-9053	Domestic Return Receipt	

Domestic Return Receipt

EXHIBIT A-17

IN THE COURT OF COMMON PLEAS Filed and Attested OF PHILADELPHIA COUNTY, PENNSYLVANIACE 20 TWO (2024 04:04

MERLE CARTER,	May Term, 2024			
Plaintiff,	Civil Division			
VS.	No. 240502672			
L'ORÉAL USA, INC., et al.,	JURY TRIAL DEMANDED			
Defendants.				
<u>ORDER</u>				
AND NOW, this day of	, 20, upon consideration of			
Defendants L'Oréal USA, Inc., L'Oréal USA Products, Inc., and SoftSheen-Carson LLC's				
Preliminary Objections to Plaintiff's Complaint, and any responses thereto, it is HEREBY				
ORDERED AND DECREED that the Prelimin	nary Objections are SUSTAINED, and			
1. Any and all claims in Plaintiff's	 Any and all claims in Plaintiff's Complaint against Defendants L'Oréal USA, 			
Inc., L'Oréal USA Products, Inc., and SoftSheen-Carson LLC are DISMISSED WITH				
PREJUDICE; and				
2. Plaintiff's claims for punitive damages against Defendants L'Oréal USA, Inc				
L'Oréal USA Products, Inc., and SoftSheen-Carson LLC are DISMISSED WITH				
PREJUDICE.				
ВУ	THE COURT:			
т				

GORDON & REES LLP

Regina M. Nelson, Esquire Attorney ID 307082 Three Logan Square 1717 Arch Street, Suite 610 Philadelphia, PA 19103

Telephone: (215) 561-2300 Facsimile: (215) 693-6650 Email: rmnelson@grsm.com

ELLIS GEORGE LLP

Dennis S. Ellis (*pro hac vice* pending) Katherine F. Murray (*pro hac vice* pending) Serli Polatoglu (*pro hac vice* forthcoming) 2121 Avenue of the Stars, 30th Floor

Los Angeles, CA 90067 Telephone: (310) 274-7100 Facsimile: (310) 275-5697 Email: dellis@ellisgeorge.ci

Email: dellis@ellisgeorge.com

Counsel for Defendants L'Oréal USA, Inc.,
Email: kmurray@ellisgeorge.com

L'Oréal USA Products, Inc., and SoftSheen-

Email: spolatoglu@ellisgeorge.com Carson LLC

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

MERLE CARTER, May Term, 2024

Plaintiff, Civil Division

vs. No. 240502672

L'ORÉAL USA, INC., et al.,

JURY TRIAL DEMANDED

Defendants. **NOTICE TO PLEAD TO PLAINTIFF:**

You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days from service hereof or a judgment may be

entered against you.

/s/ Regina M. Nelson Regina M. Nelson, Esq.

<u>DEFENDANTS L'ORÉAL USA, INC., L'ORÉAL USA PRODUCTS, INC., AND SOFTSHEEN-CARSON LLC'S PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT</u>

Defendants, L'Oréal USA, Inc., L'Oréal USA Products, Inc., and SoftSheen-Carson LLC (collectively, "L'Oréal USA"), by and through their undersigned attorneys, hereby file these Preliminary Objections to Plaintiff Merle Carter's ("Plaintiff") Complaint pursuant to Pennsylvania Rule of Civil Procedure 1028, and in support thereof, aver as follows:

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

- 1. On May 22, 2024, Plaintiff filed a Complaint against L'Oréal USA. A true and correct copy of the Complaint is attached hereto as Exhibit A.
- 2. Plaintiff alleges that she developed endometrial cancer as a result of using various hair relaxer products during an unspecified period of time. (*See* Ex. A.)
- 3. Plaintiff filed this lawsuit after the publication of a first-ever "groundbreaking study" observing a purported association between the use of hair straightening products and uterine cancer (the "Chang Article"). (Ex. A ¶¶ 108, 109 n.1.) 1
- 4. Plaintiff alleges that she used eight different hair relaxer brands for an unspecified number of decades and alleges that these products are associated with ten different Defendants. (Ex. A ¶¶ 2-6, 8-9, 11-12, 14, 27-29, 72.)
- 5. Plaintiff does not identify all of the hair relaxer products she used. Rather, she alleges that she used products from various brands including, but not limited to, L'Oréal USA's Dark & Lovely, Optimum Care, Bantu, and Precise product lines, all of which have marketed multiple hair relaxer products over time. (Ex. A ¶ 27.)

¹ (Citing Che-Jung Chang, PhD, et al., *Use of Straighteners and Other Hair Products and Incident Uterine Cancer*, 114 J. Nat'l Cancer Inst., no. 12, Dec. 2022, at 1636 (published Oct. 17, 2022), https://academic.oup.com/jnci/article/114/12/1636/6759686.)

- 6. Plaintiff alleges that she used "different variations" of hair relaxers from these L'Oréal USA brands "including but not limited to" Dark & Lovely Regular No-Lye Hair Relaxer, Optimum Salon Haircare Defy Breakage No-Lye Relaxer, Bantu No Base Relaxer, and Ultra Precise No-Lye Conditioning Relaxer. (Ex. A ¶¶ 74-77.) But Plaintiff fails to identify any of the other variations of hair relaxer products she used.
- 7. Plaintiff alleges that she used L'Oréal USA relaxer products for an untold number of decades beginning in 1976, during which time she also used at least eight other types of hair relaxers marketed by three other defendants. (Ex. A ¶¶ 71-73, 78-80.)
- 8. Plaintiff does not disclose when or how frequently she used the products beyond claiming that she used a hair relaxer belonging to one of the eight brands approximately every four to eight weeks. (Ex. A \P 72, 81.)
- 9. Pursuant to Pennsylvania Rules of Civil Procedure 1028(a)(2), (a)(3), and (a)(4), L'Oréal USA now files the within Preliminary Objections to Plaintiff's Complaint.

II. PRELIMINARY OBJECTIONS

- 10. Preliminary objections may be filed by any party to any pleading on grounds that include: the pleading fails to conform to law or rule of court or includes scandalous or impertinent matter; the pleading is not sufficiently specific; or the pleading is legally insufficient (demurrer). Pa.R.Civ.P. 1028(a)(2)-(4).
- 11. All preliminary objections are to be raised at one time. Pa.R.Civ.P. 1028(b). Two or more preliminary objections may be raised in one responsive pleading. *Id.* The grounds for each preliminary objection shall be stated and may be inconsistent with each other. *Id.* The role of the trial court in ruling on preliminary objections is to determine whether the facts, as pled, are legally sufficient to allow a claim to proceed. *Firing v. Kephart*, 353 A.2d 833, 835 (Pa. 1976).

- A. Counts III and IV Should Be Dismissed Pursuant to Rule 1028(a)(4) Because Federal Law Preempts These Claims.
- 12. L'Oréal USA incorporates by reference all preceding paragraphs as if fully set forth herein.
- 13. Plaintiff's claims for negligence (Count III) and breach of implied warranties (Count IV) are expressly preempted by the Federal Food, Drug, and Cosmetic Act ("FDCA"). The FDCA, 21 U.S.C. § 301, *et seq.*, provides that "no State or political subdivision of a State may establish or continue in effect any requirement for labeling or packaging of a cosmetic that is different from or in addition to, or that is otherwise not identical with, a requirement specifically applicable to a particular cosmetic or class of cosmetics under this chapter." 21 U.S.C. § 379s(a).
- 14. While FDCA preemption does not apply to products liability claims, it bars all other claims that seek to impose labeling requirements that are not identical to those imposed by the FDCA and its regulations. *Critcher v. L'Oréal USA, Inc.*, 959 F.3d 31, 35-36 (2d Cir. 2020).
- 15. Plaintiff's Complaint would require L'Oréal USA to identify constituent ingredients in the fragrance component of its hair relaxers. (Ex. A ¶ 69 (alleging that "unknown chemicals" are "hidden under the ingredient title 'fragrances'").) However, FDA regulations expressly do not require disclosing the ingredients in the fragrance component. 21 C.F.R. § 701.3(a).
 - 16. Plaintiff's non-products liability claims are therefore preempted.

WHEREFORE, L'Oréal USA respectfully requests that Counts III and IV of the Complaint be dismissed.

- B. Counts I through IV Should Be Dismissed Pursuant to Rules 1028(a)(2) and (a)(3) Because Plaintiff Fails to Satisfy Pennsylvania's Fact-Pleading Standards and Plaintiff's Allegations Are Insufficiently Specific.
- 17. L'Oréal USA incorporates by reference all preceding paragraphs as if fully set forth herein.
- 18. Pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2), a preliminary objection may be filed where a pleading fails to conform to law or rule of court. Pa.R.Civ.P. 1028(a)(2). Rule 1028(a)(3) separately provides that a preliminary objection may be filed if a pleading is insufficiently specific. *Id.* 1028(a)(3).
- 19. The Commonwealth of Pennsylvania is a fact pleading jurisdiction. Under Pennsylvania's system of fact pleading, the plaintiff bears the burden of defining the issues, and setting forth every act or performance essential to that end in the complaint. Santiago v. Pa. Nat'l Mut. Cas. Ins. Co., 613 A.2d 1235, 1238 (Pa. Super. Ct. 1992).
- 20. Further, pursuant to Pennsylvania Rule of Civil Procedure 1019(a), the material facts on which a cause of action or defense is based shall be stated in a concise and summary form. Pa.R.Civ.P. 1019(a).
- 21. Rule 1019(f) further provides that "[a]verments of time, place and items of special damages shall be specifically stated." Pa.R.Civ.P. 1019(f).
- 22. Pleadings are to place the defendant on notice of the intended grounds for suit, and should not require the defendant to guess at their substance. Schweikert v. St. Luke's Hosp. of Bethlehem, 886 A.2d 265, 270 (Pa. Super. Ct. 2005).
- 23. Plaintiff's allegations against L'Oréal USA are so vague and conclusory that they cannot apprise L'Oréal USA of the precise nature of Plaintiff's claims. As a result, L'Oréal USA cannot understand the specific basis for which recovery is sought and cannot, therefore, understand the grounds for defense.

Case ID: 240502

Control No.: 24064165

24. Plaintiff's Complaint violates the specificity requirements because it fails to identify all of the L'Oréal USA products Plaintiff alleges she used, the time period in which she used them and how often she used them, and makes no attempt to identify the chemical Plaintiff claims caused her injury and whether any such chemical was included in a product that she used. This lack of specificity, alone, is sufficient grounds to dismiss all of Plaintiff's claims against L'Oréal USA.

WHEREFORE, L'Oréal USA respectfully requests that the Complaint be dismissed.

- C. <u>Plaintiff's Strict Liability Causes of Action (Counts I and II) Should Be</u>
 <u>Dismissed Pursuant to Rule 1028(a)(4) Because Plaintiff Fails to Identify All</u>
 of the Products that Caused Her Injury and How the Injuries Were Caused.
- 25. L'Oréal USA incorporates by reference all preceding paragraphs as if fully set forth herein.
- 26. Pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4), a preliminary objection in the nature of a demurrer may be filed if a pleading is legally insufficient.

 Pa.R.Civ.P. 1028(a)(4).
- 27. "Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom." *Feingold v. Hendrzak*, 15 A.3d 937, 941 (Pa. Super. Ct. 2011) (citation omitted). However, "the court need not accept as true conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinion." *Silo v. Ridge*, 728 A.2d 394, 398 (Pa. Commw. Ct. 1999) (citation omitted) (internal quotation marks omitted).
- 28. To state a strict products liability claim, Pennsylvania law requires that an allegedly defective product be "*causally* connected to a compensable injury." *Tincher v. Omega Flex, Inc.*, 104 A.3d 328, 383-84 (Pa. 2014) (emphasis added); *Spino v. John S. Tilley Ladder*

Co., 696 A.2d 1169, 1172 (Pa. 1997) ("Pennsylvania law requires that a plaintiff prove two elements in a product liability action: that the product was defective, and that the defect was a substantial factor in causing the injury.").

29. The Complaint does not identify all of the L'Oréal USA products allegedly used by Plaintiff, much less allege a causal connection between any such product and Plaintiff's alleged injury.

WHEREFORE, L'Oréal USA respectfully requests that Counts I and II of the Complaint be dismissed.

- D. <u>Plaintiff's Negligence and Warranty Causes of Action (Counts III and IV)</u> Should Be Dismissed Pursuant to Rule 1028(a)(4) Because Plaintiff Fails to <u>Identify Products</u>, Fails to Allege a Duty, and Fails to Allege Causation.
- 30. L'Oréal USA incorporates by reference all preceding paragraphs as if fully set forth herein.
- 31. Pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4), a preliminary objection may be filed if a pleading is legally insufficient. Pa.R.Civ.P. 1028(a)(4).
- 32. "Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom." *Feingold*, 15 A.3d at 941 (citation omitted). However, "the court need not accept as true conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinion." *Silo*, 728 A.2d at 398 (citation omitted) (internal quotation marks omitted).
- 33. Like strict liability claims, claims for negligence and breach of warranty under Pennsylvania law similarly require proof that the defendant's negligence or breach of warranty caused the plaintiff's injury. *See, e.g., Rhodes v. Avis Budget Car Rental, LLC*, No. C.A. 15-

1459, 2016 WL 1435443, at *3, *7 (W.D. Pa. Apr. 12, 2016) (dismissing claims for negligence and breach of warranty where the plaintiff's allegations could not establish that the defendant's conduct caused the plaintiff's injury).

- 34. Additionally, a negligence claim is appropriately dismissed where the plaintiff does not specifically allege the existence of a statutory or common law duty. *See Phillips v. Cricket Lighters*, 841 A.2d 1000, 1008 (Pa. 2003) ("It is axiomatic that in order to maintain a negligence action, the plaintiff must show that the defendant had a duty 'to conform to a certain standard of conduct;' that the defendant breached that duty; that such breach caused the injury in question; and actual loss or damage." (citation omitted)).
- 35. Plaintiff's Complaint identifies only four of the L'Oréal USA products she allegedly used, but alleges that she used other "variations" of L'Oréal USA products, which she fails to name. (Ex. A ¶ 74-77.) Plaintiff's failure to identify some of the products she used renders her unable to properly allege that L'Oréal USA owed her a duty of care as to any of those products. Furthermore, Plaintiff's Complaint similarly does not identify the ingredient or chemical in any product that she alleges caused her to develop endometrial cancer. Her failure to allege such facts demonstrating causation is also fatal to her negligence claim.
- 36. Plaintiff's failure to allege all of the products she used and how they were defective is also fatal to her breach of warranty claim. To prevail on a claim for breach of implied warranty of merchantability, a plaintiff must show (1) that the seller is a merchant with respect to goods of that kind and (2) that the goods are merchantable, including that they "are fit for the ordinary purposes for which such goods are used" and that they "conform to the promises or affirmations of fact made on the container or label if any." *See* 13 Pa.C.S.A. § 2314. Without identifying all of the products she used, Plaintiff necessarily cannot allege that the goods failed to

conform to promises made on their containers. And because Plaintiff does not allege what promises were made on the labels of the few products she does name, she has not pled a warranty claim as to any of those products.

37. Plaintiff's negligence and warranty claims are insufficiently pled and should be dismissed pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4).

WHEREFORE, L'Oréal USA respectfully requests that Counts III and IV of the Complaint be dismissed.

- E. <u>Plaintiff's Claim for Punitive Damages Should be Stricken Pursuant to Rule 1028(a)(4).</u>
- 38. L'Oréal USA incorporates by reference all preceding paragraphs as if fully set forth herein.
- Alloyedal USA objects to Plaintiff's claims for punitive damages because Plaintiff fails to allege the requisite levels of conduct on behalf of L'Oréal USA. Claims for punitive damages must be supported by allegations of malicious, willful, or reckless conduct. *See Wright v. Ryobi Techs., Inc.*, 175 F. Supp. 3d 439, 455-56 (E.D. Pa. 2016) (applying Pennsylvania law) ("Punitive damages may be awarded because the defendant's conduct was outrageous, or because the defendant's motive was evil, or because of the defendant's reckless indifference to the rights of others Punitive damages are only warranted for conduct that is malicious, wanton, reckless, willful, or oppressive." (citations omitted)). In *Wright*, for example, the court granted summary judgment for the defendants on the plaintiff's punitive damages claim because his evidence that a safer design of the product at issue was possible was not alone sufficient to show knowledge of "a high degree of risk of physical harm to another" followed by a deliberate act, or failure to act, in conscious disregard of that risk. *Id.* at 457.

40. Plaintiff merely alleges that L'Oréal USA failed to exercise reasonable care with respect to the manufacture of the Dark & Lovely, Optimum Care, Bantu, and Precise brands. These allegations do not meet the pleading threshold required to state a claim for punitive damages, and thus each and every one of Plaintiff's punitive damages claims should be dismissed pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4).

WHEREFORE, L'Oréal USA respectfully requests that the Court sustain these Preliminary Objections and dismiss all of Plaintiff's four causes of action and her claims for punitive damages with prejudice.

Date: June 20, 2024 By: __/s/ Regina M. Nelson

GORDON & REES LLP

Regina M. Nelson, Esquire Attorney ID 307082 Three Logan Square 1717 Arch Street, Suite 610 Philadelphia, PA 19103 Telephone: (215) 561-2300 Facsimile: (215) 693-6650

Email: rmnelson@grsm.com

ELLIS GEORGE LLP

Dennis S. Ellis (*pro hac vice* pending) Katherine F. Murray (*pro hac vice* pending) Serli Polatoglu (*pro hac vice* forthcoming) 2121 Avenue of the Stars, 30th Floor Los Angeles, CA 90067

Telephone: (310) 274-7100 Facsimile: (310) 275-5697 Email: dellis@ellisgeorge.com Email: kmurray@ellisgeorge.com Email: spolatoglu@ellisgeorge.com

Attorneys for Defendants, L'Oréal USA, Inc., L'Oréal USA Products, Inc., and SoftSheen-Carson LLC

GORDON & REES LLP

Regina M. Nelson, Esquire Attorney ID 307082 Three Logan Square 1717 Arch Street, Suite 610 Philadelphia, PA 19103

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ELLIS GEORGE LLP

Dennis S. Ellis (*pro hac vice* pending) Katherine F. Murray (*pro hac vice* pending) Serli Polatoglu (*pro hac vice* forthcoming) 2121 Avenue of the Stars, 30th Floor

Los Angeles, CA 90067 Telephone: (310) 274-7100 Facsimile: (310) 275-5697

Email: dellis@ellisgeorge.com Counsel for Defendants L'Oréal USA, Inc.,

Email: kmurray@ellisgeorge.com L'Oréal USA Products, Inc., and

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

MERLE CARTER, May Term, 2024

Plaintiff, Civil Division

vs. No. 240502672

L'ORÉAL USA, INC., et al.,

JURY TRIAL DEMANDED

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF L'ORÉAL USA, INC., L'ORÉAL USA PRODUCTS, INC, AND SOFTSHEEN-CARSON LLC'S PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

Defendants, L'Oréal USA, Inc., L'Oréal USA Products, Inc., and SoftSheen-Carson LLC (collectively, "L'Oréal USA"), by and through their undersigned attorneys, hereby file the within

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Memorandum of Law in Support of their Preliminary Objections to Plaintiff Merle Carter's

("Plaintiff") Complaint.

I. MATTER BEFORE THE COURT

Before the Court are Preliminary Objections on behalf of L'Oréal USA to Plaintiff's

Complaint and Plaintiff's claims of punitive damages pursuant to Pennsylvania Rules of Civil

Procedure 1028(a)(2), (3) and (4). The Complaint fails to allege any facts on which Plaintiff

may be entitled to relief—Plaintiff does not identify each of the products that she claims caused

her injuries, nor does she, more critically, identify what chemicals were contained in any product

she allegedly used that may have caused her injuries. For the reasons set forth below, L'Oréal

USA respectfully requests that this Court sustain its Preliminary Objections and dismiss

Plaintiff's Complaint.

I. STATEMENT OF QUESTIONS INVOLVED

Should Plaintiff's non-products liability claims (Counts III and IV) be dismissed 1.

because they are preempted by federal law?

Proposed answer: Yes.

2. Should Plaintiff's Complaint be dismissed for insufficient specificity and failure

to conform to Pennsylvania Rule of Civil Procedure 1019(a) because Plaintiff fails to identify all

of the products she used, her frequency of use, or the chemicals contained in the products?

Proposed answer: Yes.

3. Should Plaintiff's strict liability claims (Counts I and II) be dismissed because

they are legally insufficient to state a claim against L'Oréal USA, given that Plaintiff fails to

identify all of the products she used and fails to allege causation?

Proposed answer: Yes.

4. Should Plaintiff's negligence claim (Count III) be dismissed because it is legally insufficient to state a claim against L'Oréal USA, given that Plaintiff has not alleged sufficient facts to establish a duty owed to her by L'Oréal USA nor facts showing that her injury was caused by a product manufactured by L'Oréal USA?

Proposed answer: Yes.

5. Should Plaintiff's breach of warranty claim (Count IV) be dismissed because it is legally insufficient to state a claim against L'Oréal USA, given Plaintiff has not alleged facts showing that her injury was caused by a product manufactured by L'Oréal USA?

Proposed answer: Yes.

6. Should Plaintiff's claim for punitive damages be dismissed because it is legally insufficient to state a claim against L'Oréal USA, given that Plaintiff has not sufficiently alleged facts showing that L'Oréal USA acted with reckless indifference to the safety of others?

RELEVANT FACTS

II.

Proposed answer: Yes.

A. <u>Allegations Of The Complaint</u>

1. General Allegations Unrelated to Plaintiff

L'Oréal USA entered the hair relaxer market when it acquired Soft Sheen Products in 1998 and Carson, Inc. in 2000 and then merged them into the SoftSheen-Carson brand. The Complaint focuses very little on L'Oréal USA. Instead, it provides lengthy discussions about the invention and use of hair relaxers and the targeting of the African American community, starting around the 1970s, by persons and entities other than L'Oréal USA. (*See* Ex. A ¶¶ 31-50.)

The Complaint then turns its focus to endocrine-disrupting chemicals ("EDCs"), specifically phthalates, identifying one phthalate in particular, Di-2-ethylhexylphthalate ("DEHP"). (Ex. A ¶ 51-70.) Plaintiff alleges that chemical hair relaxers contain EDCs, which

"can cause the creation of excess hormones or deficient hormones and can cause adverse effects, including causing abnormalities in sex organs, early puberty, endometriosis, and hormonally responsive cancers, among other hormonally related diseases." (*Id.* ¶ 54.)

The Complaint associates uterine and endometrial cancers with exposure to EDCs (Ex. A ¶¶ 89-97), but only the October 2022 Chang Article made a tacit association between hair relaxers and Plaintiff's injury. The Chang Article authors observed "novel" findings of a relationship between hair relaxers and uterine cancer. (*Chang, supra* note 1, at 1638.) The study noted that "[b]rands or ingredients of hair products were not collected" (*id.* at 1638, 1641), and that "[m]ore research is warranted to replicate [the] findings in other settings and to identify specific chemicals driving this observed association" (*id.* at 1636).

2. <u>Allegations Regarding Plaintiff</u>

Plaintiff alleges that she used hair relaxers approximately every four to eight weeks beginning in 1976. (Ex. A ¶¶ 71, 72, 81.) The Complaint identifies eight purported hair relaxer brands that Plaintiff used over an unspecified period. (*Id.* ¶ 72.) Four of the brands listed are L'Oréal USA brands: "Dark & Lovely," "Optimum Care," "Bantu," and "Precise." (*Id.* ¶¶ 27, 72.) While Plaintiff identifies one product she used from each of these brands, she also alleges that she used "different variations" of these hair relaxer products, but does not identify them in her Complaint. (Ex. A ¶¶ 74-77.) Plaintiff alleges that her use of these various products, including at least eight other products manufactured by the other named Defendants, resulted in her being diagnosed with endometrial cancer in November of 2015. (*Id.* ¶¶ 30, 72, 73, 78-80, 113.)

B. Notable Omissions From The Complaint

The Complaint reveals more by what it omits than by what it contains. While Plaintiff's Complaint identifies four brands sold by L'Oréal USA (Dark & Lovely, Optimum Care, Bantu,

and Precise) and alleges that she used "different variations" of hair relaxer sold under each brand, she only identifies one product from each of those brands that she actually used. (Ex. A ¶ 27, 74-77.) Furthermore, Plaintiff does not identify a single product she used that contains DEHP, or any other phthalate, nor does she provide the frequency of her product use. Plaintiff also has not identified any material misrepresentation or omission made by L'Oréal USA.

III. <u>LEGAL STANDARD</u>

A. <u>Preliminary Objections in the Nature of a Demurrer Based on Legal</u> Insufficiency Pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(4).

Pursuant to Pennsylvania Rule of Civil Procedure 1028(a), preliminary objections may be filed "by any party to any pleading." Pa.R.Civ.P. 1028(a). Preliminary objections may be made on the grounds of legal insufficiency of a pleading styled as a demurrer. *Id.* 1028(a)(4). In evaluating a demurrer, the question for the court is "whether, on the facts averred, the law says with certainty that no recovery is possible." *Werner v. Plater-Zyberk*, 799 A.2d 776, 783 (Pa. Super. Ct. 2002). If, on a review of the facts, the complaint is legally insufficient, a preliminary objection in the nature of a demurrer will be sustained. *See Cardenas v. Schober*, 783 A.2d 317, 321 (Pa. Super. Ct. 2001).

Additionally, "[i]n reviewing preliminary objections, only facts that are well pleaded, material, and relevant will be considered as true, together with such reasonable inferences that may be drawn from those facts" *Santiago v. Pa. Nat. Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super. Ct. 1992). The plaintiff's "conclusions or averments of law are not considered to be admitted as true by a demurrer." *MacGregor v. Mediq Inc.*, 576 A.2d 1123, 1125 (Pa. Super. Ct. 1990). Accordingly, a court "may not supply a fact missing in the complaint." *Hart v. O'Malley*, 647 A.2d 542, 552-53 (Pa. Super. Ct. 1994), *aff'd*, 676 A.2d 222 (Pa. 1996).

B. Preliminary Objections Based Upon Plaintiff's Failure to Properly Plead Pursuant to Pennsylvania Rules of Civil Procedure Rule 1028(a)(2) and (a)(3).

Pennsylvania Rule of Civil Procedure 1028(a)(2) provides that preliminary objections may be made on the ground that a pleading fails to conform to law or rule of court. Pa.R.Civ.P. 1028(a)(2). Pennsylvania Rule of Civil Procedure 1019(a) further mandates that "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form." *Id.* 1019(a). "The complaint must not only apprise the defendant of the claim being asserted, but **it must also summarize the essential facts to support the claim.**" *Donaldson v. Davidson Bros.*, 144 A.3d 93, 103 (Pa. Super. Ct. 2016) (citation omitted).

Pennsylvania Rule of Civil Procedure 1028(a)(3) similarly provides that preliminary objections may be made on the ground that a pleading is insufficiently specific. Pa.R.Civ.P. 1028(a)(3). This rule asks "whether the complaint is sufficiently clear to enable the defendant to prepare his defense," or 'whether the plaintiff's complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense." *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. Ct. 2006) (citation omitted). "In this Commonwealth, the pleadings must define the issues and thus every act or performance to that end must be set forth in the complaint." *Koch v. First Union Corp.*, Nos. CONTROL 100727, CONTROL 100746, 2002 WL 372939, at *2 (Pa. Com. Pl. Jan. 10, 2002) (citation omitted) (internal quotation marks omitted).

Preliminary objections "are properly granted when the pleadings are legally insufficient for one or more of several reasons enumerated in Rule of Civil Procedure 1028 . . . [including] (2) failure of a pleading to conform to law or rule of court . . .; [and] (3) insufficient specificity in a pleading." *Baker v. Cambridge Chase, Inc.*, 725 A.2d 757, 764 (Pa. Super. Ct. 1999) (second omission in original). Finally, "a court is not required to allow amendment of a pleading if a

party will be unable to state a claim on which relief could be granted." *Werner v. Zazyczny*, 681 A.2d 1331, 1338 (Pa. 1996).

IV. <u>ARGUMENT</u>

A. Plaintiff's Non-Products Liability Claims are Preempted by Federal Law.

Plaintiff's negligence and warranty causes of action are expressly preempted by the FDCA. Under the Supremacy Clause of the United States Constitution, "federal law is 'the supreme Law of the land' and any conflicts between federal and state laws must be resolved in favor of federal law." Werner v. Plater-Zyberk, 799 A.2d 776, 787 (Pa. 2002) (citation omitted). One recognized method of preemption, express preemption, exists where "there is an explicit statutory command that state law be displaced." Id. "It is also well established that federal law may impliedly preempt state law to the extent that the state law conflicts with a federal regulatory scheme." Id. at 788.

With regard to the labeling of cosmetics, the FDCA includes an express preemption provision that prohibits any state from "establish[ing] or continu[ing] in effect any requirement for labeling or packaging of a cosmetic that is *different from* or *in addition to*, or that is *otherwise not identical with*, a requirement specifically applicable to a particular cosmetic or class of cosmetics under this chapter." 21 U.S.C. § 379s(a) (emphases added). The only exception to this broad preemption is for products liability claims. *Id.* § 379s(d).

Thus, a plaintiff cannot seek to "impose labeling requirements that are additional to, or different from, those that [the FDCA] has established." *Critcher v. L'Oréal USA, Inc.*, 959 F.3d 31, 38 (2d Cir. 2020). Congress conferred authority to the Food and Drug Administration ("FDA") to promulgate rules and regulations under the FDCA, 21 U.S.C. § 371(a), and the FPLA, 15 U.S.C. § 1454(a). Federal regulations do not require cosmetic manufacturers to designate phthalates apart from what it requires to be designated as a "fragrance." 21 C.F.R.

§ 701.3(a) ("The label on each package of a cosmetic shall bear a declaration of the name of each ingredient in descending order of predominance, *except that fragrance or flavor may be listed* as *fragrance or flavor*." (emphasis added)).

The "sweeping preemptive force" of the FDCA led the Second Circuit to affirm the dismissal of analogous mislabeling claims in *Critcher*, 959 F.3d at 38. There, the plaintiffs asserted consumer protection, unjust enrichment, and breach of warranty claims against L'Oréal USA, alleging various cosmetic products' labels were misleading because they did not disclose that consumers "will not be able to access or use a large percentage . . . of the product." *Id.* at 36. While the FDCA requires that labels contain an "accurate statement of the quantity of the [products'] contents in terms of weight, measure, or numerical count," the FDA promulgated more "specific labeling requirements" consistent with the statute, and no statute or regulation required plaintiffs' desired disclosure. *Id.* at 35. Thus, because the FDCA preempts "*any* state law that provides for labeling requirements that are not *exactly the same* as those set forth in the FDCA and its regulations," the claims were found to be preempted. *Id.* at 35-36.

Plaintiff accuses L'Oréal USA of falsely marketing, mislabeling, and/or failing to disclose the existence of phthalates in its products. Plaintiff then speculates that she could not identify from the ingredient label whether a product contains phthalates because phthalates may be part of the product's fragrance. (Ex. A ¶ 69.) As L'Oréal USA has no obligation to identify fragrance ingredients, and certainly has no obligation to identify ingredients that are not in their products, Plaintiff's claims are preempted.²

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² Plaintiff's claims are also impliedly preempted both because the FDCA occupies the field and because Plaintiff's demands conflict with the FDCA. *See Plater-Zyberk*, 799 A.2d at 787.

B. <u>Plaintiff's Complaint Should Be Dismissed Because Plaintiff Fails to Comply with Pennsylvania's Fact Pleading Standard.</u>

Plaintiff's claims should be dismissed because Plaintiff fails to identify all of the products she used. Pennsylvania has a specific pleading standard, fact pleading, which places on the plaintiff the burden of defining the issues and setting forth every act or performance essential to that end in the complaint. *Santiago v. Pa. Nat'l Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super. Ct. 1992). Pennsylvania Rule of Civil Procedure 1019(a) further mandates that "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form." Pa.R.Civ.P. 1019(a). Additionally, subsection (f) requires that "[a]verments of time, place and items of special damage shall be specifically stated." *Id.* 1019(f). Pennsylvania Rule of Civil Procedure 1022 adds that each paragraph in a pleading "shall contain as far as practicable only one material allegation." *Id.* 1022. Each of Plaintiff's causes of action fails because she does not meet this fact pleading standard. She fails to identify all of the products she used, she does not allege how or when she used specific products, nor does she allege what chemicals caused her injury. These deficiencies are fatal to her claims.

Plaintiff did not properly plead her strict liability claims for design defect and failure to warn, because she failed to allege the necessary facts as to each particular product. The court in *Commonwealth v. Monsanto Co.*, 269 A.3d 623, 661 (Pa. Commw. Ct. 2021) confirmed that "[a]s required to plead a valid design defect claim, Plaintiffs allege that Defendants' PCB products were defective, the products were defective when they left Monsanto's hands, and the defects harmed the public and/or Plaintiffs' natural resources." As to failure to warn claims, "[t]he first element of a strict-liability claim is that the product be defective [including where it has an inadequate warning]. . . . 'The second element of a strict-liability failure-to-warn claim is that the defective warning caused the plaintiff's injury." *Id.* at 663-64 (quoting *Whyte v. Stanley*

Black & Decker, Inc., 514 F. Supp. 3d 684, 700 (W.D. Pa. 2021)). Here, in her design defect and her failure to warn claims, Plaintiff identifies only some of the products she allegedly used. The product she used is material to her strict products liability claims, thus by failing to name all of the products she used, Plaintiff has not met Pennsylvania's fact-pleading requirements under Rule 1019(a). As to the products Plaintiff does identify, she does not allege the defect in any product or how it caused her injury. Failure to identify these necessary facts is similarly fatal to both her design defect and failure to warn claims. These claims should therefore be dismissed.

Plaintiff's claim for negligence fails for similar reasons. As to the unnamed products in Plaintiff's Complaint, Plaintiff has not alleged a duty owed to her by L'Oréal USA to conform to a particular standard of conduct. Barton v. Lowe's Home Ctrs., Inc., 124 A.3d 349, 359 (Pa. Super. Ct. 2015). In a products liability action, a plaintiff can allege a duty by showing a relationship between the purchaser of a product and the manufacturer of that product. *Id.* Here, Plaintiff cannot allege such a relationship because she does not include facts specifying what particular products she purchased from L'Oréal USA. As her Complaint fails to allege what particular product she allegedly used that was manufactured by L'Oréal USA, she cannot establish the first element of her negligence claim. Similarly, as to the products Plaintiff does name, she has not alleged how the products caused her injury and thus cannot establish the third element of her negligence claim: causation. See Phillips v. Cricket Lighters, 841 A.2d 1000, 1008 (Pa. 2003). Accordingly, her negligence claim should be dismissed.

Finally, Plaintiff's claim for breach of warranty also fails because she has not included allegations in her Complaint as to all of the products she allegedly used. "Under Pennsylvania law, contract claims for breach of the implied warranty of merchantability and fitness for a particular purpose may also fall within the sphere of products liability actions." *Barton*, 124

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A.3d at 357. Such warranties are "implied by law to protect buyers from loss where goods purchased are below commercial standards." *Id.* Here, Plaintiff fails to allege facts identifying each of the particular goods that she used. The products she allegedly used, and which allegedly harmed her, are material facts underlying her claims. Without them, her breach of warranty claim cannot proceed. As to the four products she has identified, Plaintiff has failed to specify what aspect of these products' warnings or labels were insufficient. Thus, this claim should also be dismissed for failure to abide by Pennsylvania's fact-pleading standard.

Plaintiff's failure to meet her burden of pleading the material facts underlying her claims with the requisite specificity leaves L'Oréal USA to guess at which of its hair relaxer products she may have used over an indeterminate number of decades, how the product was defective, and what component of the product harmed her. This leaves L'Oréal USA unable to properly prepare a defense to the action. This situation is precisely what Rules 1028 and 1019 exist to protect against, and Plaintiff's Complaint should be dismissed in its entirety accordingly.

C. <u>Plaintiff's Strict Liability Claims Fail as a Matter of Law Because She Fails to Identify All of the Products She Used or Allege Causation.</u>

Plaintiff brings two claims against L'Oréal USA in strict liability: one alleging design defect and the other alleging a failure to warn. As detailed below, both claims fail as a matter of law because they lack an essential component of a strict products liability claim: identification of every product that caused the complained-of injury. *See Cummins v. Firestone Tire & Rubber Co.*, 495 A.2d 963, 968-69 (Pa. Super. Ct. 1985) (affirming the dismissal of the plaintiff's strict liability cause of action because he could not "adequately aver the requisite connection between appellees and the defective product," which constituted a "fatal deficiency" to his claim); *see also Tincher v. Omega Flex, Inc.*, 104 A.3d 328, 401 (Pa. 2014) ("[I]n Pennsylvania, the cause of action in strict products liability requires proof, in the alternative, either of the ordinary

consumer's expectations or of the risk-utility of a product."). As Plaintiff does not allege all of the products she used in either of her strict liability causes of action, nor does she allege how any product caused her harm, Plaintiff's design defect and failure to warn claims must be dismissed.

1. Plaintiff's Strict Liability Design Defect Claim Fails Because She Does Not Identify Every Product She Used or How the Products were Defective.

Plaintiff's design defect claim (Count I) fails because the Complaint does not identify a defect in any product—let alone an actual product Plaintiff purportedly used. To prevail on a design defect claim, "the plaintiff must prove that the product was defective, the defect existed when it left the defendant's hands, and the defect caused the harm." *Barton v. Lowe's Home Ctrs., Inc.*, 124 A.3d 349, 354-55 (Pa. 2015) (citing *Riley v. Warren Mfg., Inc.*, 688 A.2d 221, 224 (Pa. Super. Ct. 1997)). In Pennsylvania, a defective condition may be proven "by showing either that (1) the danger is unknowable and unacceptable to the average or ordinary consumer, or that (2) a reasonable person would conclude that the probability and seriousness of harm caused by the product outweigh the burden or costs of taking precautions." *Tincher v. Omega Flex, Inc.*, 104 A.3d 328, 335 (Pa. 2014). No matter which method a plaintiff elects, the baseline requirement remains the same: the plaintiff must allege both that a particular product is defective and what makes it purportedly defective. Here, Plaintiff does neither.

Plaintiff's design defect claim first fails because she does not identify all of the L'Oréal USA products she allegedly used. Plaintiff instead alleges that she used "different variations" of products "including but not limited to" Dark & Lovely Regular No-Lye Hair Relaxer, Optimum Salon Haircare Defy Breakage No-Lye Relaxer, Bantu No Base Relaxer, and Ultra Precise No-Lye Conditioning Relaxer. (*See* Ex. A ¶¶ 74-77). By failing to identify the other products she allegedly used, Plaintiff has not satisfied her pleading burden.

In *Barton*, the court found that the plaintiff had included sufficient detail in his complaint alleging a design defect in a lawnmower so as to avoid dismissal. The allegations in his complaint included that:

(1) [Plaintiff] purchased a Husqvarna lawnmower (with a Kohler engine) from Lowe's; (2) just three days later, he used the lawnmower for the first time to cut grass on his property and then stored the lawnmower in his barn; (3) later that day, the engine or mower caught fire and/or exploded inside the barn, because the engine ran too hot and melted the fuel lines, causing fuel to leak onto the hot engine or muffler; and (4) the barn burned down.

124 A.3d at 355. The court determined that the allegations were sufficient to survive preliminary objections because "when a brand new lawnmower catches fire or explodes after its first use, it could be the result of a defect in its design or manufacture." *Id.* at 356. Although more specifics would likely be unearthed during the discovery process, the plaintiff's complaint sufficiently "furnish[ed] a concise overview of the defects that he intend[ed] to prove." *Id.*

In contrast to the detailed allegations in the complaint in *Barton*, Plaintiff's Complaint includes hardly any specific factual allegations. Instead, Plaintiff's 37-page Complaint recounts the history of chemical hair relaxer products (¶¶ 31-50), details what endocrine disrupting chemicals are and how they purportedly work (¶¶ 51-70), and makes allegations concerning the link between chemical hair relaxers and endometrial cancers (¶¶ 89-112). Plaintiff does not identify all of the products she actually used, nor does she specify when or how often she used hair relaxer products, or what ingredient in the products rendered them defective. Plaintiff merely alleges that over the course of an unspecified number of decades, she used hair relaxers from any one of eight different brands every four to eight weeks. (Ex. A ¶¶ 72, 81.)

Accordingly, Plaintiff's strict liability design defect claim fails as a matter of law and should be dismissed.

2. <u>Plaintiff's Strict Liability Failure to Warn Claim Fails Because</u>
<u>Plaintiff Does Not Identify All of the Products She Used, How the</u>
Products Were Defective, or How the Purported Defect Injured Her.

Plaintiff's failure to warn claim (Count II) is similarly lacking because the Complaint does not identify all of the products she allegedly used, the nature of any defect, nor how the purported defect injured her.

In order to prevail on a failure to warn claim, "a plaintiff must prove that the lack of warning rendered the product unreasonably dangerous and that it was the proximate cause of the injury." Barton, 124 A.3d at 355 (quoting Weiner v. Am. Honda Motor Co., 718 A.2d 305, 309 (Pa. Super. Ct. 1998)). In Chandler v. L'Oréal USA, Inc., 340 F. Supp. 3d 551, 556 (W.D. Pa. 2018), aff'd, 774 F. App'x 752 (3d Cir. 2019), the plaintiff purchased a L'Oréal USA product: the Regular Optimum Salon Haircare Defy Breakage Salon No-Lye Relaxer (the "Defy Breakage relaxer"). Although it was her first time using this particular product, the plaintiff "did not read the warnings on the exterior of the Defy Breakage relaxer box and while she read the warnings/instructions which were provided inside the box, she concedes that she ignored same." Id. at 562. The plaintiff alleged that she experienced hair loss after using the Defy Breakage relaxer and she brought claims including failure to warn under both negligence and strict liability theories. *Id.* at 559, 561. The court recited several of the safety warnings that were "clearly state[d] under bold headings" on the exterior of the packaging, including that the product must be tested on a strand of hair before using because failure to do so "can damage hair or result in permanent hair loss." *Id.* at 563. Similar warnings appeared on the interior instruction sheet, yet the plaintiff did not heed them. The court determined "that the product's packaging and instruction sheet clearly warn consumers that failure to follow the written instructions may result in injury, including permanent hair loss, the exact injury about which Plaintiff complains" and granted summary judgment for L'Oréal USA on the failure to warn claim. *Id.* at 563-64.

Here, such an evaluation is not possible because Plaintiff has not identified all of the specific products she used nor when she used them. Instead, Plaintiff avers that she used "different variations" of products sold under four L'Oréal USA brands (Dark & Lovely, Optimum Care, Bantu, and Precise) over a period of "decades." (Ex. A ¶ 72, 74-77.) Although Plaintiff identifies one product from each brand, she alleges that her use of L'Oréal USA products is not limited to these products, and fails to specify what additional products she used. (*Id.* ¶¶ 74-77.) Each brand markets various products (*e.g.*, Dark and Lovely Triple Nourished Silkening Relaxer). This ambiguity thus makes it impossible for her to allege how L'Oréal USA's warnings rendered each product she used unreasonably dangerous. As a result, Plaintiff also cannot allege that her injury was "proximately" caused by L'Oréal USA.

Furthermore, Plaintiff fails to allege any direct link between an ingredient contained in any L'Oréal USA product and risk of developing endometrial cancer. Plaintiff's conclusory and speculative allegations cannot satisfy her pleading burden. For these reasons, the claim must be dismissed.

D. <u>Plaintiff's Negligence Claim Fails Because She Does Not Allege a Duty Owed to Her By L'Oréal USA Nor Does She Allege How the Products Caused Her Injury.</u>

Plaintiff's negligence claim (Count III) should also be dismissed because Plaintiff fails to allege a duty owed to her by L'Oréal USA. Pennsylvania law requires that, in order to prevail on a claim sounding in negligence, a plaintiff must show that the defendant had a duty to conform to a certain standard of conduct, that the defendant breached that duty, that such breach caused the injury in question and actual loss or damage was sustained by the plaintiff. *Phillips v. Cricket Lighters*, 841 A.2d 1000, 1008 (Pa. 2003). Plaintiff's negligence claim should be dismissed because the Complaint does not allege facts supporting a claim that L'Oréal USA owed her a

common law or statutory duty as to the unnamed products she claims to have used, nor does it allege any facts explaining what ingredient in the products she does identify caused her harm.

In order to determine whether a duty exists, courts weigh the following factors: "(1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution." *Althaus ex rel.*Althaus v. Cohen, 756 A.2d 1166, 1169 (Pa. 2000) (citations omitted). Although Plaintiff alleges she used four hair relaxer products manufactured by L'Oréal USA, she also alleges that she used other "variations" of these products (Ex. A ¶ 74-77) which she fails to identify and thus cannot properly allege are L'Oréal USA products. Even if she had identified all of the products she allegedly used, a relationship between Plaintiff and L'Oréal USA as a manufacturer alone is not sufficient to impose a duty on L'Oréal USA. Similarly, though the social utility of hair relaxers may weigh in favor of a duty, this factor is likewise not dispositive.

As to foreseeability, Plaintiff's Complaint relies heavily on the Chang Article, which was the first to associate hair relaxer use with uterine cancer and was published in October 2022. (*Chang, supra* note 1, at 1638; Ex. A ¶¶ 108-112.) Despite the recent date of publication, Plaintiff's Complaint contends that L'Oréal USA did not perform sufficient testing "after learning that their formulations could be carcinogenic." (Ex. A ¶ 160(b)). Plaintiff's allegations that products allegedly manufactured by L'Oréal USA (or any one of four other brands) over the course of decades might possibly be carcinogenic based on the limited and qualified findings of one recent study is a far cry from foreseeable and unreasonable harm. *Compare with Barton*, 124 A.3d at 359 (finding that the design or manufacture of a lawnmower engine foreseeably created an unreasonable risk of harm to others when it exploded after its first use while standing

in a barn). Factor three thus weighs against a finding of duty as do factors four and five; although the public has an interest in product safety, the consequences of finding a duty on such threadbare allegations as exist here will discourage companies from manufacturing innovative products. The public interest in engaging companies in litigation over minimal, ambiguous, and vague allegations made without any factual substance is weak, thereby weighing against a finding of duty here. In sum, Plaintiff's allegations are not sufficient to establish a duty owed to her by L'Oréal USA and thus her negligence claim must fail as a matter of law.

Plaintiff's failure to identify many of the products she purportedly used is also fatal to her negligence claim because she cannot allege causation. For example, in Cummins v. Firestone Tire & Rubber Co., 495 A.2d 963, 966 (Pa. Super. Ct. 1985), the plaintiff was injured when a car tire and rim exploded at a car service garage he was visiting. The damaged car parts were irretrievable and, thus, the plaintiff brought his negligence and strict liability claims against various manufacturers of truck wheel rims, the owner of the fleet of trucks, manufacturers of truck trailers and tractors, suppliers of truck tires and rims, and the owner of the real estate where the accident occurred. Id. Several defendants filed preliminary objections, arguing that the plaintiff could not bring negligence claims without specifically identifying a defendant as the one responsible for the rim at issue. Id. The preliminary objections were sustained and the trial court dismissed the complaint as to those defendants. *Id.* at 966-67. On appeal, the Superior Court agreed and held that identification of the manufacturer of the "particular offending product" is required to bring a negligence claim, and because the plaintiff was unable to identify any one manufacturer of the offending product, "there can be no allegations of duty, breach of duty or legal causation, and hence there can be no liability." *Id.* at 967-68.

Here, Plaintiff's Complaint is similarly lacking in facts alleging a particular offending product and an associated manufacturer for some of the products she claims to have used. Plaintiff alleges that she used "different variations" of hair relaxer from each brand not limited to the four she names in her Complaint. (Ex. A ¶ 74-77.) As she has not identified the remaining products, she is unable to identify the defect associated with the product or the causative link between the defective product and her injury. *See Klein v. Council of Chem. Assn's*, 587 F.

Supp. 213, 223 (E.D. Pa. 1984) ("Because plaintiffs have failed to identify a specific product, plaintiffs cannot allege a causal connection between conduct of the defendants and [the plaintiff's] injuries. Plaintiffs have failed to allege a cause of action for negligence against the product defendants."). Moreover, as to the four products Plaintiff does identify in her Complaint, Plaintiff does not allege what ingredient or chemical contained in those products caused her injuries. Thus, Plaintiff's negligence claim fails to state a claim as a matter of law and should be dismissed.

E. <u>Plaintiff's Breach of Implied Warranties Claim Should Be Dismissed</u> Because She Fails to State What Product She Used and How It Was Defective.

Plaintiff's claim for a breach of the implied warranty of merchantability (Count IV) also fails as a matter of law.³ In Pennsylvania, to prevail on a claim for breach of implied warranty of merchantability, a plaintiff must show (1) that the seller is a merchant with respect to goods of that kind and (2) that the goods are merchantable, including that they "are fit for the ordinary

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³ Plaintiff's Complaint styles Count IV as a "Breach of Implied Warranties," however, the language of this cause of action regarding goods not being "of merchantable quality and safe and fit for the use for which they were intended" indicates that her claim is specifically one of a breach of implied warranty of merchantability. To the extent that Plaintiff intended to also plead a breach of the implied warranty of fitness for a particular purpose, L'Oréal USA addresses that claim as well.

purposes for which such goods are used" and that they "conform to the promises or affirmations of fact made on the container or label if any." *See* 13 Pa.C.S.A. § 2314. Merchantability requires that goods "have an inherent soundness which makes them suitable for the purpose for which they are designed" and also "that they be free from significant defects, that they perform in the way that goods of that kind should perform, and that they be of reasonable quality within expected variations and for the ordinary purpose for which they are used." *Gall ex rel. Gall v. Allegheny Cnty. Health Dep't*, 555 A.2d 786, 789-90 (Pa. 1989) (citation omitted).

Here, Plaintiff's Complaint only satisfies the first prong of the statutory requirement, alleging that L'Oréal USA was in the business of manufacturing hair relaxers. (Ex. A ¶ 173.) The Complaint, however, alleges no facts in support of the second prong. While the Complaint does identify four products representing some of the L'Oréal USA products Plaintiff used, it does not allege additional necessary information—such as that those hair relaxer products were not suitable for the purpose for which they were designed, or that they were significantly defective due to containing a certain ingredient or a flawed instruction. Of course, Plaintiff could likewise not make such allegations as to any other L'Oréal USA product she purportedly used without first identifying a particular product manufactured by L'Oréal USA. As she makes no such allegation in her Complaint, Plaintiff cannot state a claim for breach of the implied warranty of merchantability, and thus her claim must be dismissed as a matter of law.

Additionally, to the extent that Plaintiff purports to make a claim for a breach of the implied warranty of fitness for a particular purpose, this claim also must fail. The Pennsylvania Commercial Code provides that, when a seller has reason to know of any particular purpose for which the goods are required and also knows that the buyer is relying on the seller's skill or judgment to furnish suitable goods, that an implied warranty then exists that the goods shall be

Case ID: 240502672

fit for such purpose. *See* 13 Pa.C.S.A. § 2315. A "'particular purpose' differs from the 'ordinary purpose' for which the goods are used in that it envisages a specific use by the buyer which is peculiar to the nature of his business" as contrasted with the ordinary purpose, which covers the uses for which the goods are customarily used. *Gall*, 555 A.2d at 790 (quoting 13 Pa.C.S.A. § 2315, Uniform Commercial Code Comment 2).

Gall is instructive on this point. In Gall, the plaintiffs brought a claim for breach of implied warranties against the local county health department, alleging that they contracted giardiasis because the defendants had failed to property treat and protect the water supply. Id. at 787. The court held that "[t]he sale of water for drinking and household use does not carry with it the implied warranty of fitness for a particular purpose" and sustained the defendants' preliminary objections in the nature of a demurrer to the plaintiffs' claim of breach of warranty of fitness for a particular purpose. Id. at 790.

Similarly, here, Plaintiff's breach of warranty of fitness for a particular purpose claim fails because any type of hair relaxer product Plaintiff may have used would have been used for its ordinary purpose: chemically straightening hair. Thus, she cannot sustain a claim for breach of implied warranty of fitness for a particular purpose.

F. Plaintiff Has Not Adequately Pled a Claim for Punitive Damages.

Plaintiff's demand for an award of punitive damages for each of her four causes of action fails because she has not sufficiently alleged that L'Oréal USA's conduct was malicious, willful, or done with knowledge of a high risk of physical harm. (Ex. A ¶ 139, 152, 163, 179.) In Pennsylvania, "punitive damages are an 'extreme remedy' available in only the most exceptional matters." *Phillips v. Cricket Lighters*, 883 A.2d 439, 445 (Pa. 2005) (citation omitted). A claim for punitive damages "must be based on "malicious", "wanton", "reckless", "willful", or "oppressive" conduct on the part of defendant." *Chambers v. Montgomery*, 192 A.2d 355, 358

(Pa. 1963) (quoting *Hughes v. Babcock*, 37 A.2d 551, 554 (Pa. 1944)); *see also Feld v. Merriam*, 485 A.2d 742, 748 (Pa. 1984) ("The state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious."). In determining whether a defendant exhibited reckless indifference sufficient to support an award of punitive damages, the court "must analyze whether the complaint's allegations establish that the actor actually knew or had reason to know of facts which created a high risk of physical harm to plaintiff. Further, the defendant must have proceeded to act in conscious disregard of or indifference to that risk." *Field v. Phila. Elec. Co.*, 565 A.2d 1170, 1182 (Pa. Super. Ct. 1989).

For example, in *McDaniel v. Merck, Sharp & Dohme*, 533 A.2d 436 (Pa. Super. Ct. 1987), the plaintiff, executor of a decedent's estate, brought claims for punitive damages against a hospital, several of its doctors, and a pharmaceutical company for administering a drug to the decedent that allegedly led to her death. The court explained that "[p]unitive damages may not be awarded for misconduct which constitutes ordinary negligence such as inadvertence, mistake and errors of judgment." *Id.* at 447. As the plaintiff's complaint had alleged facts against the hospital and doctors that were only sufficient to support a claim for ordinary negligence, the court affirmed the dismissal of punitive damages claims against those defendants. *Id.* at 447-48. However, because the plaintiff alleged that the pharmaceutical company "knew of a serious risk of illness and death resulting from [the drug's] use, and deliberately and negligently failed to communicate that knowledge to the medical community" the court found the punitive damages claim appropriate as to that defendant. *Id.* at 448.

Here, Plaintiff does not allege that any conduct of L'Oréal USA was malicious, wanton, reckless, willful, or oppressive. She merely contends that L'Oréal USA knew, or should have known, of unreasonable risks of harm associated with unidentified products manufactured by

Dark & Lovely, Optimum, Bantu, and Precise, including their alleged propensity to cause cancer, and that it "concealed, downplayed, or otherwise suppressed" information about the risks. (Ex. A ¶ 134, 146.) Importantly, Plaintiff's allegations that L'Oréal USA should have known that its products were potentially carcinogenic are belied by her own allegations that any purported association between hair relaxers and uterine cancer was revealed in a "groundbreaking study" published in October of 2022. (Ex. A ¶ 108.) This recent development is a far cry from knowledge and deliberate withholding of information supporting a "serious risk of illness and death" that supported a punitive damages claim in *McDaniel*. Plaintiff's allegations that L'Oréal USA failed to sufficiently test its products and failed to disclose a recently suggested risk of harm associated with endocrine-disrupting chemicals does not rise to the level of malicious and intentional conduct sufficient to warrant an "extreme" damages remedy. Accordingly, as Plaintiff has not alleged facts sufficient to support an award of punitive damages for any of her four claims, all of her punitive damages claims should be dismissed.

V. <u>RELIEF REQUESTED</u>

For the foregoing reasons, L'Oréal USA respectfully requests the Court sustain its Preliminary Objections to Plaintiff's Complaint and dismiss all of Plaintiff's claims against L'Oréal USA with prejudice.

Date: June 20, 2024 By: Regina M. Nelson

GORDON & REES LLP

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Attorneys for Defendants, L'Oréal USA, Inc., L'Oréal USA Products, Inc., and SoftSheen-Carson LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 20, 2024, a true and correct copy of the foregoing Preliminary Objections to Plaintiff's Complaint were served electronically via the Court's Electronic Filing System in accordance with Pennsylvania Rule of Civil Procedure 205.4(g).

By: /s/ Regina M. Nelson

GORDON & REES LLP

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Case ID: 240502672

Control No.: 24064165

EXHIBIT A-18

GORDON & REES LLP

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Counsel for Defendants L'Oréal USA, Inc.,
Email: kmurray@ellisgeorge.com

L'Oréal USA Products, Inc., and SoftSheen-



IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

MERLE CARTER, May Term, 2024

Plaintiff, Civil Division

vs. No. 240502672

L'ORÉAL USA, INC., et al.,

JURY TRIAL DEMANDED

Defendants.

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that the undersigned attorney of the law offices of Gordon Rees Scully Mansukhani, LLP hereby files this Notice of Appearance in the above-referenced action as counsel for Defendants L'Oreal USA, Inc., L'Oreal USA Products, Inc., and SoftSheen-Carson LLC in this matter, and requests that copies of all briefs, orders,

correspondence and other papers be served upon the undersigned.

GORDON REES SCULLY MANSUKHANI LLP

By: /s/ Regina M. Nelson
Regina M. Nelson

Dated: June 20, 2024

Case ID: 240502672

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Appearance has been served this 20^{th} day of June, 2024 upon all counsel of record via the Court's Electronic Filing System.

GORDON REES SCULLY MANSUKHANI LLP
/s/ Regina M. Nelson
Regina M. Nelson

EXHIBIT A-19

KLINE & SPECTER, P.C.

By: SHANIN SPECTER, ESQUIRE (Attorney I.D. No.: 40928) ffice
TOBI L. MILLROOD, ESQUIRE (Attorney I.D. No.: 77764) 19
BRADEN R. LEPISTO, ESQUIRE (Attorney I.D. No.: 313586)

SHERRELL L. DANDY, ESQUIRE (Attorney I.D. No.: 309348)

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Philadelphia, Pennsylvania 19102

215-772-1000

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ATTORNEYS FOR PLAINTIFF

MERLE CARTER

Plaintiff,

V.

L'ORÉAL USA, INC., et al.

Defendants.

COURT OF COMMON PLEAS PHILADELPHIA COUNTY

MAY TERM, 2024

NO. 02672

JURY TRIAL DEMANDED

PRAECIPE TO REINSTATE COMPLAINT

TO THE PROTHONOTARY:

Kindly reinstate the attached Complaint for an additional thirty (30) days.

KLINE & SPECTER, P.C.

By:

SHERRELL L. DANDY, ESQUIRE

henell I. Dardy

Attorney for Plaintiffs

Date: June 19, 2024

Court of Common Pleas of Philadelphia County		For Pro	For Prothonotary Use Only (Docket Number)			
Trial Division Civil Cover Sheet		MAY 202 E-Filing Number: 240504		02672		
PLAINTIFF'S NAME MERLE CARTER		DEFENDANT'S NAME				
PLAINTIFF'S ADDRESS 6608 LINCOLN DRIVE PHILADELPHIA PA 19199			DEFENDANT'S ADDRESS 575 FIFTH AVENUE NEW YORK NY 10017			
PLAINTIFF'S NAME		DEFENDANT'S NAME L'ORÉAL USA PRO	DEFENDANT'S NAME L'ORÉAL USA PRODUCTS, INC.			
PLAINTIFF'S ADDRESS			DEFENDANT'S ADDRESS 10 HUDSON YARDS NEW YORK NY 10001			
PLAINTIFF'S NAME		DEFENDANT'S NAME SOFT SHEEN-CARS	DEFENDANT'S NAME SOFT SHEEN-CARSON, LLC			
PLAINTIFF'S ADDRESS			DEFENDANT'S ADDRESS 10 HUDSON YARDS NEW YORK NY 10001			
TOTAL NUMBER OF PLAINTIFFS TO	DTAL NUMBER OF DEFENDANTS		tition Action	Notice of Appeal		
□ \$50,000.00 or less □ A IX Ju X More than \$50,000.00 □ N	ary 🔲 Sa	vings Action	ommerce Inor Court Appeal Inatutory Appeals	Settlement Minors W/D/Survival		
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RELATED PENDING CASES (LIST BY CASE (CAPTION AND DOCKET NUMBER)	FILED PRO PROTHY	IS CASE SUBJECT COORDINATION OF YES			
		MAY 22 2024				
		C. SMITH				
TO THE PROTHONOTARY:						
Kindly enter my appearance on	behalf of Plaintiff/Petitione	er/Appellant: MERLE CARTE	ER			
Papers may be served at the add	lress set forth below.					
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY SHERRELL L. DANDY			ADDRESS KLINE & SPECTER, P.C. 1525 LOCUST STREET			
PHONE NUMBER (215) 772-1000	FAX NUMBER none entered	19TH FLOOR PHILADELPHIA I	19TH FLOOR PHILADELPHIA PA 19102			
SUPREME COURT IDENTIFICATION NO. 309348		E-MAIL ADDRESS sherrell.dandy	E-MAIL ADDRESS sherrell.dandy@klinespecter.com			
SIGNATURE OF FILING ATTORNEY OR PARTY SHERRELL DANDY		DATE SUBMITTED Wednesday, May	DATE SUBMITTED Wednesday, May 22, 2024, 09:54			

COMPLETE LIST OF DEFENDANTS:

- 1. L'ORÉAL USA, INC. 575 FIFTH AVENUE NEW YORK NY 10017
- 2. L'ORÉAL USA PRODUCTS, INC. 10 HUDSON YARDS NEW YORK NY 10001
- 3. SOFT SHEEN-CARSON, LLC 10 HUDSON YARDS NEW YORK NY 10001
- 4. STRENGTH OF NATURE, LLC
 64 ROSS ROAD
 SAVANNAH GA 31405
- 5. GODREJ SON HOLDINGS, INC. 64 ROSS ROAD SAVANNAH GA 31405
- 6. AVLON INDUSTRIES, INC. 1999 NORTH 15TH STREET MELROSE PARK IL 60160
- 7. ACME MARKETS, INC.
 75 VALLEY STREAM PARKWAY
 MALVERN PA 19355
- 8. ACME MARKETS
 7010 GERMANTOWN AVENUE
 PHILADELPHIA PA 19119
- 9. ACME MARKETS 7700 CRITTENDEN STREET PHILADELPHIA PA 19118
- 10. CVS PHARMACY, INC. 1 CVS DRIVE WOONSOCKET RI 02895
- 11. CVS PHARMACY
 6701 RIDGE AVENUE
 PHILADELPHIA PA 19128
- 12. CVS PHARMACY
 7065 LINCOLN DRIVE
 PHILADELPHIA PA 19119

Case ID: 240502672

KLINE & SPECTER, P.C.

By: SHANIN SPECTER, ESQUIRE (Attorney I.D. No.: 40928) ffice TOBI L. MILLROOD, ESQUIRE (Attorney I.D. No.: 77764) BRADEN R. LEPISTO, ESQUIRE (Attorney I.D. No.: 313586) SHERRELL L. DANDY, ESQUIRE (Attorney I.D. No.: 309348)

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ATTORNEYS FOR PLAINTIFF

MERLE CARTER, M.D. 6608 LINCOLN DRIVE PHILADELPHIA, PA 19199

215-772-1359 (fax)

PLAINTIFF

V.

DEFENDANTS

L'ORÉAL USA, INC. 575 FIFTH AVENUE NEW YORK, NY 10017

AND

L'ORÉAL USA PRODUCTS, INC. 10 HUDSON YARDS NEW YORK, NY 10001

AND

SOFT SHEEN-CARSON, LLC 10 HUDSON YARDS NEW YORK, NY 10001

AND

STRENGTH OF NATURE, LLC 64 ROSS ROAD SAVANNAH, GA 31405

AND

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY, **PENNSYLVANIA**

JURY TRIAL DEMANDED

GODREJ SON HOLDINGS, INC. 64 ROSS ROAD SAVANNAH, GA 31405

AND

AVLON INDUSTRIES, INC. 1999 NORTH 15TH STREET MELROSE PARK, IL 60160

AND

ACME MARKETS, INC. 75 VALLEY STREAM PARKWAY MALVERN, PA 19355

AND

ACME MARKETS 7010 GERMANTOWN AVENUE PHILADELPHIA, PA 19119

AND

ACME MARKETS 7700 CRITTENDEN STREET PHILADELPHIA, PA 19118

AND

CVS PHARMACY, INC. 1 CVS DRIVE WOONSOCKET, RI 02895

AND

CVS PHARMACY 6701 RIDGE AVENUE PHILADELPHIA, PA 19128

AND

CVS PHARMACY 7065 LINCOLN DRIVE PHILADELPHIA, PA 19119

NOTICE TO PLEAD



NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service Philadelphia Bar Association 1101 Market Street, 11th Floor Philadelphia, PA 19107 (215) 238-6338

ADVISO

Le han demandado a used en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Referral Service Philadelphia Bar Association 1101 Market Street, 11th Floor Philadelphia, PA 19107 (215) 238-6338

CIVIL ACTION – COMPLAINT

Plaintiff, Merle Carter, M.D., through her undersigned counsel, Kline & Specter, P.C., hereby demands damages from the Defendants in a sum in excess of the local arbitration limits exclusive of interest, costs, and damages for prejudgment delay, upon the cause of action set forth below:

PARTIES

- 1. Plaintiff, Merle Carter, M.D., is an adult individual citizen and resident of the Commonwealth of Pennsylvania, residing therein at 6608 Lincoln Drive, Philadelphia, PA 19199.
- 2. Defendant, L'Oréal USA, Inc., is incorporated in Delaware with its principal place of business and headquarters located at 575 Fifth Avenue, New York, New York 10017.
- Defendant, L'Oréal USA Products, Inc., is incorporated in Delaware with its principal place of business and headquarters located at 10 Hudson Yards, 347 Tenth Avenue, New York, New York 10001.
- 4. Defendant, SoftSheen-Carson, LLC, is a limited liability company organized in the state of New York with its principal place of business and headquarters located at 90 State St., Albany, New York 12207. Upon information and belief, SoftSheen-Carson, LLC's members and sole interested parties are L'Oréal USA, Inc. and L'Oréal S.A., L'Oréal's French owned company, with its headquarters and principal place of business located in France.
- 5. Defendant, Carson, Inc., D/B/A SoftSheen, is a corporation with its principal place of business and headquarters located at 2870 Peachtree Rd., Suite, 464, Atlanta, Georgia 40405.
- 6. Defendant, Carson (W.I.) Inc., D/B/A SoftSheen, is a corporation, with its headquarters located in Delaware at 251 Little Falls Drive, Wilmington, Delaware 19808.

- 7. Defendants L'Oréal USA, Inc., Loreal USA Products, Inc., SoftSheen-Carson, LLC, Carson, Inc., and Carson (W.I.) Inc., will be collectively referred to as "L'Oréal Defendants."
- 8. Defendant Strength of Nature, LLC, is a corporation with its principal place of business and headquarters located at 64 Ross Road, Savannah, Georgia 31405.
- 9. Defendant Godrej Consumer Products Limited is, and at all times relevant to this action, a global corporation with its principal place of business located at Godrej One, Fourth Floor, Pirojshanagar, Eastern Express Highway, Fikhroli (East), Mumbai 400 079, India. The company's website references Strength of Nature as its base of operations in the U.S., which is located at 64 Ross Road, Savannah, Georgia, and process may be served upon its registered agent, Karen Sood, 6355 Peachtree Dunwood Road, Atlanta Georgia, 30328.
- 10. Defendants Strength of Nature, LLC and Godrej Consumer Products Limited, will be collectively referred to as "Strength of Nature Defendants."
- 11. Defendant Avlon Industries, Inc. ("Avlon") is, and at all times relevant to this action, a corporation with its principal place of business located at 1999 North 15th Street, Melrose Park, Illinois 60160.
- 12. ACME Markets, Inc. is a corporation with its principal place of business and headquarters located at 75 Valley Stream Parkway, #250, Malvern, PA 19355. At all times relevant hereto, ACME Markets, Inc., conducted business as ACME Markets at 7010 Germantown Avenue, Philadelphia, PA 19119 and 7700 Crittenden Street, Philadelphia PA, 19118.
- 13. Defendants ACME Markets, Inc., ACME Markets at 7010 Germantown Avenue, and ACME Markets at 7700 Crittenden Street will be collectively referred to as "ACME Defendants."

- 14. Defendant CVS Pharmacy, Inc. ("CVS") is a corporation with its principal place of business and headquarters located at 1 CVS Drive, Woonsocket, RI 02895. At all times relevant hereto, CVS conducted business as CVS Pharmacy located at 6701 Ridge Avenue, Philadelphia, PA 19128 and the CVS Pharmacy located at 7605 Lincoln Drive, Philadelphia, PA 19119.
- 15. Defendants CVS Pharmacy, Inc., CVS Pharmacy at 6701 Ridge Avenue and CVS Pharmacy at 7605 Lincoln Drive will be collectively referred to as "CVS Defendants."

JURISDICTION

- 16. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
 - 17. This Court has original jurisdiction over this civil action.
 - 18. This Court has personal jurisdiction over the Defendants.
- 19. At all times relevant hereto, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon (Manufacturer Defendants) contracted with, entered agreements with, sold, shipped, and distributed hair relaxer products, including those products Plaintiff purchased and applied to her hair, to various companies and stores within the Commonwealth of Pennsylvania, including but not limited to Defendants, ACME Markets and CVS Pharmacy.
- 20. At all times relevant hereto, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon engaged in the business of manufacturing, making, distributing, creating, dispensing, selling, shipping, advertising, transporting, and marketing hair relaxer products which contained dangerous and harmful amounts of endocrine disrupting chemicals and other harmful substances to sell at ACME Markets and CVS Pharmacy.
- 21. At all times relevant hereto, ACME Markets and CVS Pharmacy conducted business in the Commonwealth of Pennsylvania by: (1) selling and distributing products and

merchandise, including Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen (Hair Relaxer Brands), in the Commonwealth of Pennsylvania for the purpose of realizing pecuniary benefit from those sales and distributions; (2) shipping products and merchandise, including Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen, directly into and through the Commonwealth of Pennsylvania; (3) engaging in business in the Commonwealth of Pennsylvania; and/or, (4) owning, using, and/or possessing real property situated in the Commonwealth of Pennsylvania.

- 22. At all times relevant hereto, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon had, and continues to have, regular and systematic contact with and conducts business in and from the Commonwealth of Pennsylvania, such that it has purposefully availed itself of the laws of the Commonwealth of Pennsylvania and can reasonably expect to both sue and be sued in Pennsylvania.
- Avlon's presence in the Commonwealth of Pennsylvania satisfies the due process requirements for Pennsylvania courts to exercise jurisdiction over it. Additionally, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon consented to the exercise of jurisdiction over it by Pennsylvania courts by registering to and conducting business from the Commonwealth of Pennsylvania.
- 24. A federal court would not have jurisdiction over this case, as there is no federal question under 28 U.S.C. § 1331 or complete diversity between the parties under 28 U.S.C. § 1332. Therefore, this case is not removable to federal court under 28 U.S.C. § 1441 and 28 U.S.C. § 1446.

25. Venue is proper in Philadelphia County for each of the following reasons: (1) each Defendant regularly conducts business in Philadelphia County; (2) ACME Markets and CVS Pharmacy, as alleged *supra*, has a registered office and/or retail stores in Philadelphia County; (3) the cause of action arose in Philadelphia County; and/or, (4) Philadelphia County is a county where a transaction or occurrence took place out of which the cause of action arose.

26. The damages Plaintiff seeks, exclusive of interests and costs, exceed the jurisdictional amount requiring arbitration referral. Plaintiff seeks more than \$50,000 in damages.

FACTUAL BACKGROUND

- 27. At all times material hereto, L'Oréal Defendants developed, tested, assembled, marketed, manufactured, and sold various brands of chemical hair relaxer products that were specifically marketed to black women, including but not limited to the following brands that Plaintiff used to chemically straighten her hair:
 - a. Dark & Lovely;
 - b. Precise;
 - c. Bantu; and,
 - d. Optimum Care.
- 28. At all times material hereto, Strength of Nature Defendants developed, tested, assembled, marketed, manufactured, and sold various brands of chemical hair relaxer products that were specifically marketed to black women, including but not limited to the following brands that Plaintiff used to chemically straighten her hair:
 - a. Motions;
 - b. Dr. Miracle; and,
 - c. Ultra Sheen.

29. At all times material hereto, Defendant Avlon Industries, Inc. developed, tested, assembled, marketed, manufactured, and sold various brands of chemical hair relaxer products that were specifically marketed to black women, including but not limited to the Affirm brand that Plaintiff used to chemically straighten her hair.

30. Plaintiff developed endometrial cancer as a result of frequent use of chemical hair relaxers manufactured by the Defendants.

CHEMICAL HAIR RELAXERS

- 31. Black and brown girls are taught at a young age that to be accepted in society, they must tame and control their natural hair.
- 32. This has led black and brown women and girls to temporarily or permanently alter their curly hair strands to make them straight to adhere to western beauty standards.
- 33. Traditionally, black women straightened their hair using a heated comb, commonly referred to as the "hot comb" invented by Francois Marcel Gateau. The hot comb, combined with temporary hair straightening and growth products created by Madame C.J. Walker, became popular in the early 1900s. Madame C.J. Walker became the country's first black female millionaire. This financial success showed the world that black haircare, particularly hair straightening products, is a very lucrative business.
- 34. In 1909, Garrett A. Morgan invented a hair straightening cream after mixing chemicals to correct friction in the sewing machine when sewing wool. The G.A. Morgan Refining Cream, which straightened wool, was later used to straighten hair.
- 35. In the 1960s, the first-generation hair relaxer was created to chemically straighten curly hair permanently by breaking and restructuring the disulfide bonds. The active ingredient, sodium hydroxide, a lye, irritated the scalp, diminished hair strength, and was difficult to rinse.

Additionally, the lye caused the relaxer to have a short shelf life because of the separation of the oil and water in the relaxer cream.

36. In the 1970s, to remedy the disadvantages of the lye relaxer, hair relaxer manufacturers began marketing no-lye relaxers using calcium hydroxide or guanidine hydroxide

as the active ingredients instead of sodium hydroxide.

37. Home hair relaxer kits were marketed and sold to women who wanted to apply the

chemical hair relaxer at home instead of having it professionally applied at a hair salon.

38. The home hair relaxer kits were a cheaper alternative to professional application at

a hair salon.

39. The home hair relaxer kit typically contains plastic gloves and a wooden spatula

for application because the chemicals are too harmful to touch with bare hands. The home hair

relaxer kits also include the relaxer cream, a liquid activator mixed with the relaxer cream before

application, neutralizing shampoo, and a restorative moisturizing balm.

40. For first-time application, the relaxer cream is placed on the hair from the root to

the end. After letting it sit on the hair for ten to twenty minutes, the relaxer is rinsed out with warm

water and then shampooed with a neutralizing shampoo to deactivate the alkalizing chemical

process, followed by applying conditioner to raise the pH level and soften the hair. Lastly, a

moisturizing treatment is used to restore hydration.

41. Defendants began marketing the new and improved no-lye-based relaxers using

two main marketing strategies: 1) marketing directly to black women and 2) portraying the no-lye

relaxer as safe.



- 42. In the 1970s and 1980s, hair relaxer manufacturers used black celebrities such as Debbie Allen and Natalie Cole in their commercial ads to market the no-lye relaxer as a safe way to make curly and coarse hair more manageable.
- 43. In Dark & Lovely's 1980 hair relaxer commercial, while applying a hair relaxer, dancer and actress Debbie Allen stated, "For me, there is more to Dark & Lovely than just that it doesn't contain lye. Dark & Lovely is such a pleasure. It makes me feel like dancing." While dancing, she further stated, "It relaxes my hair just as well as those lye-based relaxers with a lot less burning and irritation, and there is no offensive odor...and it leaves it so soft that I can do anything with it."



- 44. For decades, Defendants continued to market chemical hair relaxer products to black women, but in the 1990s, the industry began to target young black girls with the first hair relaxer for girls, "Just for Me" by Soft & Beautiful.
- 45. In 1993, the infamous Just for Me commercial premiered featuring LaTavia Robinson, who later joined the famous music group Destiny's Child. Young girls sang and danced to the song with the lyrics: "Just for Me—the no-lye conditioner relaxing cream," again marketing the relaxer as safe because it did not contain lye.



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- 46. Other manufacturers followed suit, creating other chemical hair relaxers for young girls, including the PCJ hair relaxer, also introduced in the early 1990s.
- 47. Young black girls became enamored with the girls depicted on the hair relaxer boxes, believing they could achieve the same look if they used the hair relaxer.



- 48. It was recently discovered from a "Where Are They Now" interview that several women depicted on the hair relaxer boxes did not have chemically straightened hair and never used the chemical relaxer products.
- 49. The hair relaxer manufacturing companies spent billions of dollars targeting black women and girls:









50. Although the hair relaxer manufacturing companies marketed the no-lye relaxers as safe because they did not contain sodium hydroxide, the Defendant companies failed to warn consumers about the harmful chemicals in the hair relaxers, including endocrine-disrupting chemicals ("EDCs").

ENDOCRINE DISRUPTING CHEMICALS

51. Endocrine-Disrupting Chemicals disrupt the endocrine system, a network of organs and glands that produce, store, and secrete hormones. The glands, controlled by stimulation from the nervous system and chemical receptors in the blood and hormones, help maintain the body's homeostasis by regulating the functions of organs.

- 52. These glands help maintain the body's homeostasis by regulating the functions of the organs in the body, including but not limited to cellular metabolism, reproduction, sexual development, sugar and mineral hemostasis, heart rate, and digestion.
- 53. EDCs can disrupt different hormones by mimicking or interfering with a natural hormone, which can trick the cellular hormone receptor into thinking that the EDC is the hormone the cellular hormone receptor responds to.
- 54. This can cause the creation of excess hormones or deficient hormones and can cause adverse effects, including causing abnormalities in sex organs, early puberty, endometriosis, and hormonally responsive cancers, among other hormonally related diseases.
- 55. A group of EDCs called xenoestrogens mimic estrogen by pretending to be biologically created estrogen. Over time, these estrogen mimickers become difficult to detoxify in the liver.
- 56. Chemical hair relaxers contain various types of endocrine disrupting chemicals, including phthalates and parabens.

Phthalates

- 57. Phthalates were developed in the 1920s to make plastics more durable and malleable, but today are used in cosmetics to create color and make fragrances last longer.
- 58. Phthalates are used in hair relaxers to make the hair more flexible after applying the product.
- 59. Phthalates interfere with estrogen receptors and contribute to reproductive problems such as early puberty in girls, menopausal symptoms, infertility, metabolic syndrome and thyroid conditions, cognitive disorders, and cancer.

- 60. Di-2-ethylheylphtyalate ("DEHP") is a phthalate used in plastics to make them more flexible. Testing of chemical hair relaxers found the presence of DEHP.
- 61. In the Report of Carcinogens, Fifteenth Edition, the U.S. Department of Health and Human Services determined that there is "clear evidence" of carcinogenicity of DEHP in both male and female rats and that it is "reasonably anticipated to be a human carcinogen."
- 62. Similarly, the U.S. Environmental Protection Agency classified DEHP as a "B-2; probable human carcinogen" in its Chemical Assessment Summary.

Parabens

- 63. Parabens are a class of chemicals used as preservatives in cosmetic products to prevent the growth of harmful bacteria and mold and therefore preserve the product's shelf life. There are common parabens, including methylparaben, propylparaben, butylparaben, and ethylparaben.
- 64. Parabens are EDCs that also bind to estrogen receptors and mimic estrogen, causing estrogen dominance and health conditions such as reproductive issues and hormonal cancers.
- 65. A recent study detected three different parabens in hair relaxer kits: methylparaben, ethylparaben, and butylparaben. Testing of hair relaxer kits revealed high concentrations of this parabens.
- 66. An August 2019 study examined tissue samples from tumors of women diagnosed with endometrial cancer. It concluded that paraben molecules were more frequently detected in endometrial carcinoma tissue samples compared to normal endometrium.
- 67. Studies have shown that black women have elevated levels of phthalates in their urine compared to white women. Additionally, a May 2021 study showed higher levels of

parabens and phthalates detected in the urine of women diagnosed with endometrial cancer than women without cancer.

- 68. In a 2018 study, thirty-five different EDCs were present in three hair relaxer kits, including phthalates, parabens, bisphenol A ("BPA"), cyclosilicates, triclosan, and diethanolamine. Of the chemicals found to be present, 84% were not listed as ingredients on the hair relaxer labels. Each of these individual EDCs is well documented to increase estrogen and cause hormone-sensitive cancers.
- 69. The synergistic effects of the combination of the known EDCs in the hair relaxers and the unknown chemicals hidden under the ingredient title "fragrances" further increase the risk of developing hormonally driven cancers.
- 70. Moreover, because there is higher percutaneous absorption of chemicals in the scalp compared with other areas of the skin such as on the forearm, palm, and abdomen, there is an even greater risk of developing cancer from carcinogens placed on the scalp/hair.

PLAINTIFF'S HAIR RELAXER USE

- 71. Plaintiff, Merle Carter, M.D., consistently and frequently used Hair Relaxers, starting in 1976.
- 72. For decades, Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen, which are manufactured and advertised by the named Manufacturer Defendants.
- 73. Plaintiff used different variations of Avlon's Affirm hair relaxers, including but not limited to Affirm Crème Relaxer and Affirm Sensitive Scalp Relaxer.
- 74. Plaintiff used different variations of L'Oréal Defendants' Dark & Lovely hair relaxer, including but not limited to Dark & Lovely Regular No-Lye Hair Relaxer.

- 75. Plaintiff used different variations of L'Oréal Defendants' Optimum hair relaxer, including but not limited to Optimum Salon Haircare Defy Breakage No-Lye Relaxer.
- 76. Plaintiff used different variations of L'Oréal Defendants' Bantu hair relaxer, including but not limited to Bantu No Base Relaxer.
- 77. Plaintiff used different variations of L'Oréal Defendants' Precise hair relaxer, including but not limited to Ultra Precise No-Lye Conditioning Relaxer.
- 78. Plaintiff used different variations of Strength of Nature Defendants' Dr. Miracle hair relaxer, including but not limited to Dr. Miracle's No Lye Relaxer Kit and Dr. Miracle's New Growth No Lye Relaxer Kit.
- 79. Plaintiff used different variations of Strength of Nature Defendants' Motions hair relaxer, including but not limited to Motions No Lye Relaxer, Motions Classic Formula Smooth & Silken Hair Relaxer, and Motions Silkening Shine No Lye Relaxer Kit.
- 80. Plaintiff used different variations of Strength of Nature Defendants' Ultra Sheen hair relaxer, including but not limited to Ultra Sheen No Lye Relaxer.
- 81. She reapplied the relaxer to newly grown hair approximately every four to eight weeks at a hair salon or at home using home hair relaxer kits.
- 82. Plaintiff purchased multiple hair relaxer home kits from ACME Markets at 7010 Germantown Avenue, Philadelphia, Pa 19119 and 7700 Crittendon Street, Philadelphia, Pa, 19118, starting in approximately 2004, including, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen.
- 83. Plaintiff purchased multiple hair relaxer home kits from CVS Pharmacies at 6701 Ridge Avenue, Philadelphia, Pa 19128 and 7605 Lincoln Drive, Philadelphia, Pa 19119 starting in approximately 2004, including, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr.

Miracle, and Ultra Sheen.

84. Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra

Sheen hair relaxers purchased and used by the Plaintiff to apply to her hair contained endocrine

disrupting chemicals, including phthalates, parabens, and other carcinogenic chemicals.

85. Plaintiff has reason to believe that L'Oréal Defendants developed, tested,

assembled, marketed, manufactured, and sold other brands of chemical hair relaxer products

known to L'Oreal Defendants, but unknown to Plaintiff, that contained endocrine disrupting

chemicals.

86. Plaintiff has reason to believe that Strength of Nature Defendants developed, tested,

assembled, marketed, manufactured, and sold other brands of chemical hair relaxer products

known to Strength of Nature Defendants, but unknown to Plaintiff, that contained endocrine

disrupting chemicals.

87. Plaintiff has reason to believe that Defendant Avlon developed, tested, assembled,

marketed, manufactured, and sold other brands of chemical hair relaxer products known to

Defendant Avlon, but unknown to Plaintiff, that contained endocrine disrupting chemicals.

88. The Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and

Ultra Sheen hair relaxers purchased and used by the Plaintiff increased the risk of harm and/or was

a substantial contributing factor to her development of endometrial cancer.

HAIR RELAXERS LINKED TO UTERINE AND ENDOMETRIAL CANCERS

89. The uterus comprises two main parts: the endometrium and the myometrium.

Cancers in the uterus muscle layer are referred to as uterine sarcoma.

90. Endometrial cancer is a carcinoma that begins in the endometrium lining of the

uterus.

- 91. Endometrial cancer is one of the three most common cancers in females and is the most common form of uterine cancer.
- 92. There are two types of endometrial cancers. Type 1 endometrial cancer tumors are classified as endometroid adenocarcinoma and are linked to excess estrogen in the body.
- 93. Type 2 endometrial cancer tumors include uterine serous, clear cell, and squamous cell carcinomas.
- 94. Type 1 endometrial cancer is far more common than Type 2, and accounts for approximately 90% of diagnosed endometrial cancer.
- 95. Type 1 endometrial cancer incidence increased significantly between 1999 and 2006 compared to Type 2 endometrial cancers, which remained relatively stable during those years.
- 96. Some endometrial cancers begin with a pre-cancerous condition called endometrial hyperplasia, which practitioners consider an early stage of endometrial cancer.
- 97. One of the main risk factors for endometrial and other uterine cancers include changes in the balance of female hormones in the body. Accordingly, exposure to EDCs is a risk factor for developing hormone-sensitive cancers such as endometrial cancer.
- 98. Black women are twice as likely to be diagnosed with uterine cancer than white women and have poorer prognoses when diagnosed.
- 99. For decades, research has shown that black women are far more likely to develop reproductive cancers and other reproductive diseases.
- 100. Additionally, black women are two to three times more likely to develop uterine leiomyomata, also known as fibroid tumors, than white women.

101. Endometriosis is an estrogen-dependent reproductive disease that causes growth of the endometrial glands and stroma outside of the uterus, causing chronic inflammation.

102. Endometriosis is a risk factor for endometrial cancer, and as with other reproductive diseases, it is far more prevalent in black women.

103. In addition to the research demonstrating the significant disparity between black and white women in the development of reproductive disease, research also establishes that black girls go through puberty and start menstruating earlier than girls of other races.

104. Scientists from the University of California, San Francisco, and Berkeley conducted a continuing study of over 1,200 girls tracked between 2005 and 2011. They concluded that by age seven, 23% of black girls started to develop breasts, compared with just 10% of white girls.

105. Researchers have been baffled by the inability to identify why black girls are menstruating so early and why black women are developing reproductive issues at alarming rates.

106. According to NBC News, approximately 95% of black women reported using chemical hair straightening products, such as hair relaxers. Many of these women also said they began using the products in early childhood, sometimes as young as five or six years old, and continued frequent use through adulthood.

107. Although there is so much diversity within the black female community, one commonality between generations of black women is using permanent chemical hair relaxers to straighten their hair.

108. In October 2022, the results of a groundbreaking study were published in the Journal of the National Cancer Institute by Dr. Che-Jung Chang and others regarding the link between hair relaxer use and the development of uterine cancers.

109. The study found that women who frequently used hair relaxers were more than twice as likely to develop uterine cancers compared to women who did not use chemical hair relaxers. Specifically, the study found that 1.64% of women who never used hair relaxer products would develop uterine cancer before age 70. However, for women who ever used hair relaxers, the risk of uterine cancer increased to 1.80% and drastically increased to 2.55% for women who frequently used hair relaxers. ¹

110. Among women who never used straighteners in the 12 months prior to baseline, approximately 1.64% were predicted to develop uterine cancer by age 70 years. The estimated risk was 1.18% (95% CI for risk difference = 0.15% to 2.54%) higher for the women with ever use, and 2.41% (95% CI for risk difference = 0.52% to 4.80%) higher for those with frequent use compared with women who never used hair relaxers.

- 111. According to the researchers, "These findings are consistent with prior studies supporting a role of straighteners in increased risk of other female, hormone-related cancers."
- 112. The researchers further stated that "Although no differences in the hazard ratios between racial and ethnic groups were observed, the adverse health effects associated with straightener use could be more consequential for African American and/or Black women because of the higher prevalence and frequency of hair product use, younger age of initiating use, and harsher chemical formulations."²

PLAINTIFF'S CANCER DIAGNOSIS

113. In November 2015, at the age of forty-nine years old, Dr. Carter underwent endometrial sampling which revealed a diagnosis of endometrial carcinoma.

¹ 4 Che-Jung Chang, et al., Use of Straighteners and Other Hair Products and Incident Uterine Cancer, Journal of the National Cancer Institute, Oct. 17, 2022, https://pubmed.ncbi.nlm.nih.gov/36245087.

² Id.

114. Dr. Carter was advised to undergo a radical hysterectomy and bilateral oophorectomy.

115. In December 2015, Dr. Carter underwent a total robotic laparoscopic hysterectomy and bilateral oophorectomy, and surgical pathology confirmed a diagnosis of well-differentiated endometrioid adenocarcinoma, FIGO 1-2.

116. Plaintiff's use of the hair relaxers manufactured and sold by the Defendants, increased the risk of harm and/or was a substantial contributing factor to her development of endometrial cancer.

117. Dr. Carter suffered significant pain as a result of her cancer diagnosis and subsequent hysterectomy.

DISCOVERY RULE

118. Despite knowing that their chemical hair relaxer products contain large amounts of EDCs that are more likely to enter the body when applied through the scalp, the Defendants failed to warn of the potential for the use of their products to cause cancer and reproductive issues.

119. Plaintiff reserves the right to plead and invoke the discovery rule. Plaintiff's endometrial cancer is a latent injury. Accordingly, under such circumstances, Plaintiff could not have reasonably been expected to know the cause of her endometrial cancer. Plaintiff lacked the salient facts behind the cause of her endometrial cancer, and Plaintiff could not have been aware of the salient facts through reasonable diligence until less than two years before the filings of Plaintiff's action.

120. Further, Plaintiff did not and could not have known that her injuries were caused by Defendants' conduct in the exercise of reasonable diligence.

121. The carelessness and recklessness in the acts and omissions of the Defendants, as outlined and averred throughout the entirety of this Complaint, was a factual cause of and/or placed Plaintiff at an increased risk of harm for and/or was a substantial factor in causing and did in fact directly and proximately cause the severe, permanent and grievous personal injuries and damages to Plaintiff.

COUNT I STRICT LIABILITY – DESIGN DEFFECT (Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, Defendant Avlon, ACME

122. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

Defendants and CVS Defendants)

- 123. At all relevant times, Defendants were engaged in the business of manufacturing, formulating, creating, designing, testing, labeling, packaging, supplying, marketing, promoting, selling, and advertising relaxers like Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen.
- 124. Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen frequently and consistently.
- 125. Defendants marketed and advertised Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen as a safe product for use by consumers, specifically to black women and women of color, including Plaintiff, despite knowing that they contained EDCs and other harmful chemicals.
- 126. At all relevant times, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen reached their intended consumers, including Plaintiff, without substantial change in the condition in which the Defendants designed, produced, manufactured, sold, distributed, labeled, and marketed them.

- 127. Manufacturer Defendants had a duty to create Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen in a way that was not unreasonably dangerous for their normal, intended, or anticipated use.
- 128. Retailer Defendants had a duty to ensure that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen was not defective and safe for its intended use before selling said products to consumers, such as Dr. Carter.
- 129. Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were defective as they were formulated, designed, and manufactured with carcinogens.
- 130. The Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen were defective because their carcinogenic properties made them unreasonably dangerous in that they were dangerous to an extent beyond that which an ordinary consumer, such as the Plaintiff, would contemplate.
- 131. Further, the magnitude of the danger associated with use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen's Best relaxers outweighs the utility of these products.
- 132. The dangers of the Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen were unknown to the ordinary consumer.
- 133. Plaintiff did not know of these dangers. If she would have known, these dangers would have been unacceptable to her.
- 134. Defendants knew, or should have known, of the unreasonable risks of harm associated with the use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle,

and Ultra Sheen, namely their unreasonably dangerous and carcinogenic properties and their propensity to cause cancer.

- 135. At the time of Plaintiff's exposure, Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were being used in a normal, intended, or anticipated manner, as a chemical hair relaxer product.
- 136. Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers without knowledge of their dangerous characteristics, specifically the carcinogenic risks associated with use of the products.
- 137. The foreseeable risks associated with use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers exceeded the alleged benefits associated with their design and formulation.
- 138. Defects in Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxer products increased the risk, and were a producing cause, proximate cause, and substantial factor in the development of Plaintiff's cancer.
- 139. As a result of the Defendants' reckless and conscious disregard for the health and safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and omissions:
 - a. Economic losses, including medical care and lost earnings; and,
 - Noneconomic losses, including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment of life, impairment of quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of

suit, delay damages, compensatory damages, punitive damages, and such other relief as this Honorable Court may deem appropriate.

COUNT II STRICT LIABILITY – FAILURE TO WARN (Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, Defendant Avlon, ACME

Defendants and CVS Defendants)

- 140. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
- 141. Plaintiff brings this strict liability claim against Defendants for failure to warn about the toxic carcinogenic chemicals in their hair relaxer products.
- 142. At all relevant times, Defendants engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and/or promoting Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, which are defective and unreasonably dangerous to its consumers, including Plaintiff because they do not contain adequate warnings or instructions regarding the dangerous carcinogenic chemicals contained in the relaxer products.
- 143. The Defendants had a duty to warn of the risks associated with using their hair relaxer products.
- 144. Defendants knew, or should have known, of the unreasonable risks of harm associated with the use of their chemical hair relaxer products, namely their unreasonably dangerous and carcinogenic properties and their propensity to cause cancer.
- 145. However, Defendants purposefully marketed their no-lye hair relaxer products as safe because they did not contain "lye" or sodium hydroxide but failed to warn consumers about the carcinogenic endocrine-disrupting chemicals in the hair relaxers.

146. Defendants disseminated information that was inaccurate, false, and misleading and that failed to communicate accurately or adequately the comparative severity, duration, and extent of the risk of injuries associated with use and frequent use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers; and continued to promote the efficacy of the relaxers, even after they knew or should have known of the unreasonable risks from use; and concealed, downplayed, or otherwise suppressed, through aggressive marketing and promotion, any information or research about the risks and dangers of use of the relaxers.

- 147. Defendants failed to exercise reasonable care to warn of the dangerous carcinogenic risks associated with the use of its hair relaxers.
- 148. Plaintiff reasonably relied on the skill, superior knowledge, and judgment of the Defendants.
- 149. Had Defendants properly disclosed the risks associated with use of their chemical hair relaxers, Plaintiff could have chosen not to use the chemical hair relaxer and avoid the risk of developing cancer from exposure to the hair relaxing chemicals.
- 150. As a result of the absence of warning or instruction by Defendants regarding the significant health-and-safety risks associated with the use of their hair relaxers, Plaintiff was unaware that the Defendants' hair relaxers were unreasonably dangerous and had carcinogenic properties, since such information was not known to the general public.
- 151. Defendants' failure to warn regarding the dangers associated with use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers increased the risk, and was a producing cause, proximate cause, and substantial factor in the development of Plaintiff's cancer.

- 152. As a result of the Defendants' reckless and conscious disregard for the health and safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and omissions:
 - a. Economic losses, including medical care and lost earnings; and
 - b. Noneconomic losses, including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment of life, impairment of quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of suit, delay damages, compensatory damages, punitive damages, and such other relief as this Honorable Court may deem appropriate.

<u>COUNT III</u> NEGLIGENCE

(Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, and Avlon Defendant)

- 153. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
- 154. At all relevant times, Defendants engaged in the business of testing, developing, designing, manufacturing, marketing, selling, distributing, and/or promoting Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen.
- 155. Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen.
- 156. Defendants had a duty to exercise reasonable care in the research, design, manufacturing, packaging, marketing, advertisement, supply, promotion, sale, and distribution of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers,

including a duty to assure that the products would not cause users to suffer unreasonable dangerous side effects, including developing cancer.

- 157. Defendants had a duty to provide true and accurate information and warnings concerning the risks of using Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers.
- 158. Defendants failed to exercise reasonable care in that they knew, or should have known, of the unreasonable risks of harm associated with the use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers and the propensity for the Hair Relaxers to cause cancer.
- 159. Defendants also knew, or in the exercise of reasonable care, should have known, that consumers and users of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were unaware of the carcinogenic risks associated with use of the product.
- 160. Defendants' negligence includes, but is not limited to, the following acts and/or omissions:
 - Failing to sufficiently test Affirm, Dark & Lovely, Motions, Optimum,
 Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers to determine whether
 they were safe for their intended use;
 - b. Failing to sufficiently test Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers to determine their carcinogenic properties after learning that their formulations could be carcinogenic;

- c. Marketing, advertising, and recommending the use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers without sufficient knowledge as to their dangerous propensities;
- d. Representing that Affirm, Dark & Lovely, Motions, Optimum, Precise,
 Bantu, Dr. Miracle, and Ultra Sheen relaxers were safe for their intended
 use when they were not;
- e. Failing to disclose the risk of serious harm associated with use Affirm, Dark
 & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers;
- f. Failing to provide adequate instructions, guidelines, and safety precautions to protect the health of those persons whom Defendants could reasonably foresee would use Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen;
- g. Failing to use reasonable and prudent care in the design, development, and manufacture of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, so as to avoid the risk of serious harm associated with use;
- h. Failing to sufficiently test the "inert" ingredients and/or adjuvants, including the chemicals classified as fragrances contained within Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, and the propensity of these ingredients to render the relaxers toxic or to increase the toxicity of the relaxers;

- Systematically suppressing or downplaying contrary evidence about the risks, incidence, and prevalence of the side effects of exposures to Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, such as side effects of exposure to endocrine-disrupting chemicals;
- j. Failing to disclose the risk of serious harm associated with use of endocrinedisrupting chemicals either alone or when included Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen; and,
- k. Continuing to manufacture and sell Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, with the knowledge that they were unreasonably safe and dangerous.
- Marketing, advertising, and recommending the use Affirm, Dark & Lovely,
 Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers
 without sufficient knowledge as to their dangerous propensities;
- m. Representing that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were safe for their intended use when they were not;
- Failing to disclose the risk of serious harm associated with use of Affirm,
 Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra
 Sheen relaxers;
- o. Failing to provide adequate instructions, guidelines, and safety precautions to protect the health of those persons whom Defendants could reasonably

- foresee would use Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers;
- p. Representing that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were safe, specifically because they did not contain "Lye", sodium hydroxide, for their intended use when they were not;
- q. Failing to disclose the risk of serious harm associated with use of Affirm,
 Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra
 Sheen relaxers;
- r. Continuing to manufacture and sell Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, with the knowledge that the relaxers were unreasonably safe and dangerous.
- 161. It was reasonably foreseeable that consumers, including Plaintiff, would suffer injury and possibly die as a result of Defendants' failure to exercise reasonable care in the manufacturing, marketing, promotion, labeling, distribution, and sale Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers.
- 162. Defendants' negligent decisions to market and distribute Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers increased the risk of harm, and was a producing cause, proximate cause, and substantial factor of the development of Plaintiff's cancer.
- 163. As a result of the Defendants' reckless and conscious disregard for the health and safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a foreseeable, direct, and proximate result of Defendants' acts and omissions:

- a. Economic losses, including medical care and lost earnings; and,
- b. Noneconomic losses, including physical and mental pain and suffering, emotional distress, inconvenience, loss of enjoyment of life, impairment of quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of suit, delay damages, compensatory damages, punitive damages, and such other relief as this Honorable Court may deem appropriate.

COUNT IV BREACH OF IMPLIED WARRANTIES (Plaintiff v. L'Oreal Defendants, Strength of Nature Defendants, Defendant Avlon, ACME Defendants and CVS Defendants)

- 164. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
- 165. At all relevant times, Defendants L'Oréal Defendants and Strength of Nature Defendants were engaged in the business of manufacturing, formulating, creating, designing, testing, labeling, packaging, supplying, marketing, promoting, selling, advertising, and otherwise introducing Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers that Plaintiff used into the stream of commerce.
- 166. At the time L'Oréal Defendants and Strength of Nature Defendants, marketed, sold, and distributed its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers for use by Plaintiff, Defendants knew of their intended use and implicitly warranted that the products were of merchantable quality and safe and fit for the use for which they were intended, specifically to chemically straighten hair.

167. Before the time of Plaintiff's use of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon impliedly warranted to consumers, including Plaintiff, that its relaxers were of merchantable quality and safe and fit for the use for which they were intended; specifically, to chemically straighten hair.

168. L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon, however, failed to disclose that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers have dangerous propensities when used as intended and that the use of the relaxers carry an increased risk of developing severe injuries, including Plaintiff's cancer.

- 169. Plaintiff reasonably relied upon the skill, superior knowledge, and judgment of L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon, and upon their implied warranties that its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were of merchantable quality and fit for their intended purpose or use.
- 170. Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were expected to reach, and did in fact reach, consumers and/or users, including Plaintiff, without substantial change in the condition in which they were manufactured and sold by L'Oréal Defendants, Strength of Nature Defendants, and Defendant Avlon.
- 171. At all relevant times to this litigation, Defendants were aware that consumers and users of its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers, including Plaintiff, would use the products as marketed; therefore, Plaintiff was a

foreseeable user of Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers.

- 172. Defendants intended that its Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers be used in the manner in which Plaintiff was exposed, and Defendants implicitly warranted their product to be of merchantable quality, safe, and fit for this use, despite the fact that the relaxers were not adequately tested and/or researched.
- 173. In reliance on Defendants' implied warranty, Plaintiff used Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers as instructed and labeled and in the foreseeable manner intended, recommended, promoted, and marketed by Defendants.
- 174. Plaintiff could not have reasonably discovered or known of the risks of serious injury associated with Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers.
- 175. Defendants breached their implied warranty to Plaintiff in that Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers were not of merchantable quality, safe, or fit for their intended use, an/or adequately tested.
- 176. Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers have dangerous propensities when used as intended and anticipated and can cause serious injuries, including the cancer Plaintiff sustained.
- 177. The harm caused by Defendants' Affirm, Dark & Lovely, Motions, Optimum, Precise, Bantu, Dr. Miracle, and Ultra Sheen relaxers far outweighed their benefits, rendering the products more dangerous than an ordinary consumer or user would expect and more dangerous than alternative products.

178. As a direct and proximate result of Defendants' wrongful acts and omissions

Plaintiff has suffered severe and permanent physical and emotional injuries.

179. As a result of the Defendants' reckless and conscious disregard for the health and

safety of consumers of their hair relaxer products, Plaintiff sustained the following damages as a

foreseeable, direct, and proximate result of Defendants' acts and omissions:

a. Economic losses, including medical care and lost earnings; and

b. Noneconomic losses, including physical and mental pain and suffering,

emotional distress, inconvenience, loss of enjoyment of life, impairment of

quality of life, past and future.

WHEREFORE, Plaintiff respectfully demands judgment in her favor and against

Defendants, in an amount in excess of the applicable arbitration limits, including interest, costs of

suit, delay damages, compensatory damages, punitive damages, and such other relief as this

Honorable Court may deem appropriate.

Respectfully submitted,

KLINE & SPECTER, P.C.

 $\mathbf{R}_{\mathbf{W}}$

SHANIN SPECTER, ESQUIRE

TOBI L. MILLROOD, ESQUIRE BRADEN R. LEPISTO, ESQUIRE

SHERRELL L. DANDY, ESQUIRE

Attornays for Plaintiffs

Attorneys for Plaintiffs

Dated: May 22, 2024

VERIFICATION

I, Dr. Merle Carter, hereby verify that I am the Plaintiff in the foregoing action; that the

attached Complaint is based upon information which I have furnished to my counsel and

information which has been gathered by my counsel in the preparation of the lawsuit. The

language of the Complaint is that of counsel and not of affiant. I have read the Complaint and to

the extent that the allegations therein are based upon information I have given counsel, they are

true and correct to the best of my knowledge, information, and belief. To the extent that the

contents of the Complaint are that of counsel, I have relied upon counsel in making this

Verification. I understand that false statements made herein are made subject to the penalties

of 18 Pa. C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date: <u>5/22/2024</u>

Dr. Merle Carter, Plaintiff